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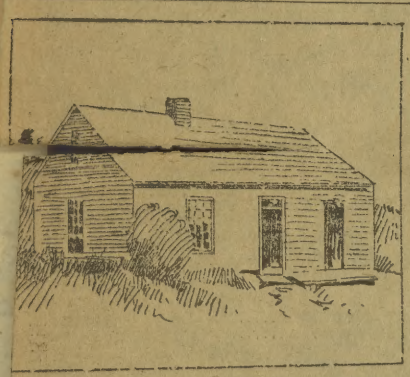
Opposite the name of each student the catalogue mentions the officers of distinction held by him in after-years. In that particular the compilers of the catalogue have made careful inquiry, and the writer has been told by members of the bar and of the judiciary in several of the states that the information is accurate and practically complete. Lawyers now living in the original states will recognize the names of many men conspicuous in the juridical annals of their state. Aaron Burr studied law at Litchfield. John C. Calhoun entered the Law School in 1805; only a few rods from the school building was the house where Harriet Beecher Stowe was born in 1811, and Henry Ward Beecher in 1813; and a short hour's walk would have brought the young Southerner to the spot where John Brown was born in 1800, in the adjoining town of Torrington. Two of the graduates became judges of the Supreme Court of the United States—Henry Baldwin and Levi Woodbury; question of law and not of fact. Of course there was no American constitutional law when the school was founded, though some of the states had already adopted constitutions. The first book on corporation law was that on Kyd, published in London in 1793, but it was chiefly made up of authorities and precedents relating to municipal corporations; and Willcock on Corporations, also an English treatise, was still more limited in its plan. There was no American text-book on corporations until the first edition of Angell and Ames was published in 1831. At that time the need of such a book had become very urgent, but in the early years of the Litchfield Law School there must have been extremely few private business corporations in this country. Not until Louisville, etc., R. Co. v. Letson, 2 How. (U. S.) 497, decided in 1844, did corporations become competent to sue and be sued as "citizens" of a state, regardless of the citizenship of the corporators. A "fellow servant" was a total stranger in legal nomenclature: Priestly v. Fowler, 3 M. & W. 1, was decided in 1837; Murray v. Railroad Co., 1 McMull. (S. Car.) 385, in 1841; and Farwell v. Railroad Co., 4 Met. (Mass.) 49, in 1842. The term "contributory negligence" had not been coined: Butterfield v. Forrester, 11 East 60, was decided in 1809; Davies v. Mann, 10 M. & W. 546, in 1842, and the phrase is not used in either case. Civil actions for damages for death by wrongful act were not maintainable. The law of insurance was virtually the creation of Lord Mansfield, but the volume of insurance law was comparatively insignificant for several decades. On the other hand, there was an abundance of real-estate law and of law concerning executors and administrators and trustees generally. In those days the executor de son tort was more in evidence than at present, although even now he has so much vitality in some jurisdictions that it would not be wise for the practitioner to characterize him as Judge Lumpkin did in Shotwell v. Rowell, 30 Ga. 559, "de son fiddlestick!" and cry, "Away with him!" The principles of equity jurisprudence had secured a firm footing, and at this day they are administered in the Federal courts as they were expounded in the High Court of Chancery in England when the Constitution was adopted in 1789. Judge Gould was a master of the common-law system of pleading, which was extolled by some of its eulogists as the perfection of human reason. During the period of the Law School the noble science of pleading became burdened with so many refinements and fictions that it fell into disrepute; the celebrated Rules of Hilary Term were adopted in 1834, and we have since substituted very generally for the technicalities of the common-law system what we term a plain and concise statement of causes of action and of defenses, administering law and equity in one suit, and sometimes peradventure evolving a judgment as incongruous as the one examined in Bennett v. Butterworth, 11 How. (U. S.) 669, or exhibiting the chaos of pleadings and proceedings tabulated by the reporter in Randon v. Toby, 11 How. (U. S.) 493. Speaking of the reformed procedure, how many lawyers are aware that the chief merit of the Code system was recognized and recommended for adoption by the preceptor of Judge Reeve, founder of the Litchfield Law School? The first volume of Root's Connecticut Reports was published in 1798. The reporter was Jesse Root, afterward as above stated, a Judge of the Supreme Court, with whom Tapping Reeve had studied law in Hartford. We will close with a quotation from the introduction to that volume: "Are not the courts of chancery in this state borrowed from a foreign jurisdiction, which grew out of the ignorance and barbarism of the law-judges at a certain period in that country from whence borrowed? And would it not be as safe for the people to invest the courts of law with the power of deciding all questions and of giving relief in all cases according to the rules established in chancery, as it is to trust those same judges as chancellors to do it? Those rules might be considered as a part of the law, and the remedy be made much more concise and effectual. Further, would not this remedy great inconveniences and save much expense to suitors, who are frequently turned round at law to seek remedy in chancery, and as often turned round in chancery because they have an adequate remedy at law? These are serious evils and ought not to be permitted to exist in the jurisprudence of a country famed for liberty and justice, and which can be remedied only by the interposition of the legislature."

LITCHFIELD'S LAW SCHOOL

Interesting Sketch of the Famous Connecticut Institution.

(Law Notes.)

In a recent issue of one of the New York newspapers an advertisement announcing the number and destination of daily trains leaving the Grand Central Station mentioned "two for Litchfield Hills." Maybe the spirit of commercialism, lately deprecated in a striking address by one of New York's foremost citizens, has left no recollection of Litchfield Hill in the minds of Gothamites, except for those of them who spend their summers in that quiet village in northwestern Connecticut, or have heard of its wonderful beauty and delightful environments. To-day its attractions as a summer residence are not surpassed by those of any other town in New England. More than a century ago the town had fame of another sort, which must have been known to every New York patriot, for the murmur of it reached across the Atlantic. One who looks through the records of the town meetings of Litchfield from 1765 to 1775 will find that there were discussions on the Stamp Act, the Boston Port Bill, and other acts of Parliamentary aggression, as clear and well defined as the debates in that town meeting where Samuel Adams and Harrison Gray Otis were the principal speakers. The child Liberty would not have been born in the Boston town meeting had not the Litchfield town meeting and other like town meetings throughout the colonies prepared the atmosphere in which alone that child could breathe. Litchfield was the principal station on the highway from Hartford to the Hudson; and a depot for military stores, a workshop, and a provision storehouse for the Continental Army were there established during the Revolution. Many distinguished royalist prisoners were sent there, and a military atmosphere pervaded the place. General Washington was a frequent visitor, and so were other general officers of the American forces, including Lafayette, who, when he visited the



AMERICA'S FIRST LAW SCHOOL.
Litchfield, 1798.

United States in 1824, went to Litchfield to renew old memories with some of his former comrades in arms. The leaden statue of King George the Third which stood on the Battery in New York was conveyed to Litchfield, and in an orchard in the rear of the Wolcott house it was melted into bullets for the patriot army. All through the struggle with the mother country Litchfield was a hotbed of patriotism, and when the first law school in America commenced its regular systematic course of instruction there in 1784, the ambitious village had among its citizens numerous men of exceptional intelligence and culture. One of them was Andrew Adams, who had been a member of the Continental Congress and was afterward a judge of the Supreme Court. Oliver Wolcott was there. He also had been a member of the Congree, had signed the Declaration of Independence, and was afterward governor of the state. Ephraim Kirby, who a few years later published the first volume of law reports ever published in America. Major Seymour, who had commanded a regiment at the surrender of Burgoyne; Benjamin Tallmadge, perhaps the most noted cavalry commander of the Revolution; Julius Deming, a very prominent and successful merchant and financier, and many others of like character were residing in the town. Into this community in the year 1773 came Tapping Reeve, a young lawyer just admitted to the bar, to settle in the practice of his profession. Born in Southold, Long Island, in 1744, the son of Rev. Abner Reeve, a Presbyterian clergyman, he was graduated at Princeton College in 1763, and was immediately appointed teacher in a grammar school in connection with the college. In that station and as a tutor in the college itself, he passed seven years. He then came to Connecticut to study law, entering the office of Judge Root, who was then a practicing lawyer in Hartford, and some years later a judge of the Supreme Court. From Hartford he came to Litchfield. He had just previously married Sally Burr, daughter of President Burr of Princeton and sister of Aaron Burr. Until the conclusion of the Revolutionary War there was but very little civil business done in the county at Litchfield, and Mr. Reeve betook himself to giving instruction to young gentlemen who looked forward to the legal profession for support and advancement when quieter times should come. This employment tended greatly to enlarge and improve his stock of legal learning, and led the way for him to begin in 1784 a systematic course of instruction in the law and to regular classes. The Law School dates from that year. It continued in successful operation and with annual graduating classes until 1833. The catalogue contains the names of one thousand and fifteen young men who were prepared for the bar subsequent to the year 1798, most of whom were admitted to the practice in the court at Litchfield. The list of students prior to that date is imperfect, but there are known to have been at least two hundred and ten. More than two thirds of the students registered from states other than connecticut. Maine sent four, New Hampshire fifteen, Vermont twenty-seven, Massachusetts ninety-four, Rhode Island twenty-two, New York one hundred and twenty-four, New Jersey eleven, Pennsylvania thirty, Delaware eighteen, Maryland thirty-nine, Virginia twenty-one, North Carolina twenty, South Carolina forty-five, Georgia sixty-nine, Ohio four, Indiana, Mississippi and Tennessee each one, Kentucky nine, Alabama three, and Louisiana seven. There were four from the District of Columbia and one from Calcutta. The greatest number who entered in any single year was fifty-four in 1813.

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In the library of the Law School at Yale University may be found several bound volumes of manuscript which apparently contain the entire lectures of Judge Reeve. They are in the handwriting of his son, Aaron Burr Reeve. But marginal reference interlineations in his own hand make it certain that these volumes have all been revised by Judge Reeve himself. The tradition is that they are the manuscripts which he used in his lectures during the last years that he taught. An inspection of these volumes shows that the course of instruction given at the Litchfield Law School covered the entire body of the law. They speak of the law generally—in reference to the sources whence it is derived, as customs and statutes, with the rules for the application and interpretation of each. Then follow Real Estate, Rights of Persons, Rights of Things, Contracts, Torts, Evidence, Pleading, Crimes and Equity. And each of these general subjects is treated of under various subsidiary topics, so as to make the matter intelligible and afford the student a correct and adequate idea of and basis for the work he will be called upon to perform in the practice of his profession. Judge Reeve conducted the school alone until 1798, when, having been elected a judge of the Supreme Court, he associated James Gould with him. They had the joint care of the school until 1820, when Judge Reeve withdrew. Mr. Gould continued the classes until 1833, being assisted during the least year by Jabez W. Huntington. Judge Reeve remained on the bench until he reached the limit of seventy years in 1815. The last part of the term he was chief justice. He died in 1823, in the eightieth year of his life. He left an only child, Aaron Burr, who graduated at Yale in 1802. Aaron Burr Reeve married Annabelle Sheddon of Richmond, Va., in 1808. He died in 1809. He left an only child, Tapping Burr Reeve, who graduated at Yale, but died unmarried in 1829, and thus the family became extinct. Mr. Gould became a judge of the Supreme Court of Connecticut, and was the author of the celebrated work on Pleading. He died at Litchfield in 1838. The course of intsruction at the school must have been incomparably more exhaustive than would be possible at the present day, for the obvious reason that there was so much less to learn. In 1784 there were no printed reports of decisions of any court in the United States. Substantially the entire body of the law was to be found in the English reports. It is said that Judge Gould had systematically digested for his students "every ancient and modern opinion, whether overruled, doubted, or in any way qualified." But vast bodies of law of which the modern student must learn something were unknown to the curriculum of the Litchfield Law School, and many principles latent in the common law were just beginning to be developed. Lord Mansfield resigned his office of Chief Justice in June, 1788, after presiding in the King's Bench over thirty years. Prior to his time the greatest uncertainty had prevailed on questions of commercial law. "Mercantile questions were so ignorantly treated when they came into Westminster Hall," says Lord Campbell in his Lives of the Chief Justices, "that they were usually settled by private arbitration among the merchants themselves." There were no treatises on the subject and few cases in the books of reports. Thus in Helyn v. Adamson 3 Burr. 669, decided in 1758, it was first distinctly ruled that the second indorser of an inland bill of exchange was entitled to recover from the prior indorser upon failure of payment by the drawee, without making any demand on or inquiry after the drawer. In 1770 it was held that the indorser of a bill of exchange is discharged if he receives no notice of a refusal to accept by the drawee. (Blesard v. Hirst, 5 Burr. 2670.) And not until 1786, in Tindal v. Brown, 1 Term Rep. 167, was it finally determined that what is reasonable notice to an indorser of non-payment by the maker of a promissory note, or acceptor of a bill of exchange, is a question of law and not of fact. Of course there was no American constitutional law when the school was founded, though some of the states had already adopted constitutions. 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SOUTH MANCHESTER.

Death of Mrs. Purnell—Medical Examiner Parker Ill—Other News.

Mrs. Elizabeth M. Purnell died yesterday after a brief illness of heart failure and pneumonia. She was ill with grip two weeks ago, but did not take to her bed until a week ago. Her physician, Dr. Moore, was called, and he soon found the case hopeless. The death of Mrs. Purnell causes widespread regret in the community. She had a large circle of friends and acquaintances who held her in high esteem. She was the widow of Samuel Purnell, who practically founded the part of the town which is now the heart of the business section. Mr. Purnell died four years ago, and since then his wife had control of considerable property in the business center, including the Park building, the Orford Inn, the Orford Annex, and several tenements. Mr. Wells of Hartford, administrator of the estate, and F. W. Mills of this place, looked after the management of the property for Mrs. Purnell. The deceased was 43 years old. Prior to her marriage she was Miss Elizabeth Finlay and always lived in South Manchester. Her husband was a resident of Hartford, and after her marriage she lived there four years. Mr. and Mrs. Purnell moved to South Manchester over twenty years ago. The deceased leaves four children, Helen, Dorothy, Elsie and Catherine the oldest 11 and the youngest 4 years, also three brothers, George W. Finlay bookkeeper at Cheney Brothers' office, James and William Finlay, printers in Hartford. Mrs. Purnell was a member of the Center Congregational Church, and in her church work her sterling character and refined nature won her many friends. The funeral will be held Saturday. Services at her late home will be conducted by Rev. George W. Reynolds, and the burial will be in

LOCAL STOCK MARKET.

Thursday Morning, February 6, 1901.

New York, New Haven & Hartford has ranged this week between 211⅞ and 212¾ and there has been a transaction in the New Haven Convertible bonds at 198½. The price of Adams Express has been somewhat erratic; it has sold at the prices and in the order given, 155, 162 and 156.

The inquiry for local stocks for investment is greater than the supply, and it will be observed the prices of fire insurance are for the most part higher than last week.

We append the usual schedule of the latest prices bid and asked by professional dealers in stocks:—

State and City Bonds.	Bid.	Ask.
Conn. State, 3½%, 1903	100	..
Conn. State 3% 1910	100	..
Hart. City Water, Con. 5%, 1906	100	..
Hart. City Res, Red, 1908	104	..
" City Consol. Water 4% g, 1918	110	..
" City Cap., Ref'd, 3½%g 1922	105	..
" City Funding, 4%g, 1918	110	..
" City Park Imp., 3½g, 1926	105	..
" Town Refund, 3½g, 1902	105	..
" Town Untax., Consol, 3%, 1909	97	..
" City Sewer, 3½%g, 1922	105	..
" City, Sch. Br. & Pav., 3½% g 1938	105	..
City Police, 3½%g, 1923	105	..
Arsenal School Dist., 4%, 191	106	..
Second North School Dis. 4%	1924	107	..
East Hartford Road, 4%, 1924	105	..
Railroad and Miscellaneous Bonds.		
Adams Express Co. 4%, 1948	105	..
American Thread Co., 1st 4% g 1919	82	90
Conn. Western R.R. (old Conv.) 7%, 1900	20	..
H. & C. W. R. R. 1st Mtg., 5% 1903	100	..
Hart. Elect. Lt. Co. 1st (Opt. 1905) 5%, 1915	105	..
Hart. Lt. & Pow. Co. 1st (Op. 1897) 6%, 1912	100	..
Hart. Lt. & Pow. Co., 2d (Opt. @ 105) 5%, 1901	100	..
Hart., Man. & Rock. Ty. Co., 1st 5% g, 1924	106	..
Hart.St.Ry.1st mtg. 4s gold 1930	105	..
Hart. & N. Y. Trans. Co., 6%	102	..
East Hfd. & Glas. Deb 5%., Reg 1900, 1927	115	..
Hart. & N. Y. Trans. Co., 6%	101	..
Swift & Co., new 5s	102	103
Int. Sil. Co., 1st 6% g, (Opt. 1901 at 10%.) 1948	97	..
Meri. Sou. & Com. 1st 5%g, 1928	106	..
New Eng. Cot. Yarn Co. 1st., 1903	100	..
N. Y., & N. E. R. R. 1st 7s, 1905	112	..
N. Y. & N. E. R. R. 1st 6s, 1905	109	..
New Eng. R. R. Gold Cons. 5% 1945	133	..
N. Y., N. H. & H. 1st Mtg. 4% 1903	100	..
N. Y., N. H. & H. Deb. Conv., 8%, 1903	197	..
N. Y., N. H. & H. deb. 4% 1947	116	118
Torrington Co. 1st 5% g, 1918	106	..
U. S. Envel. Co. 1st 5% g, 1918	109	..
Railroad and Street Railroad Stocks.		
Hart. & Conn. West. R. R.	42	44
Hart., Man. & Rock. Ty. Co.	..	..
Hartford Street R. R. Co.	150	..
Farmington St. Ry.	50	..
N. Y., N. H. & H. R. R.	211½	213
Banks and Trust Companies.		
Aetna National Bank	183	..
American Nat. Bank (par 50)	70	..
Charter Oak National Bank	93	..
City Bank	113	..
Conn. River Bank Co. (par 50)	45	..
Connecticut Trust Co.	185	..
Farmers' & Mech's Nat. Bank	122	125
Fidelity Co.	112	..
First National Bank	122	..
Hartford National Bank	137	142
Hartford Trust Co.	165	..
Nat. Ex. Bank (par 50)	62	..
Phoenix National Bank	125	..
Security Co	130	..
State Bank	125	..
United States Bank	380	..
Fire Insurance Companies.		
Aetna Fire	286	..
Connecticut Fire	195	200
Hfd Steam Boiler, (par 50)	150	..
Hartford Fire	505	515
National Fire	220	..
Phoenix Fire	170	180
Life and Indemnity Ins. Companies.		
Aetna Life	305	..
Connecticut General Life	150	..
Hartford Life Ins. Co.	..	150
Travelers	390	400
Aetna Indemnity Co.	93	100
Miscellaneous.		
Adams Express Co.	155	..
Am. Hosiery Co., (par 25)	150	..
American Thread Co., (par 5)	4	..
Am. Publishing Co., (par 25)	..	25
Billings & Spencer Co., (par 25)	35	40
Broad Brook Co., (par 25)	..	25
Burr Index Co., (par 25)	15	25
Case, Lockwood & B. Co.	125	..
Collins Co.	125	..
Corbin Cabinet Lock Co.	250	300
P. & F. Corbin (par 25)	85	..
Eagle Lock Co. (par 25)	61	65
Eddy Elec. Mfg. Co., (par 25)	..	12..
Farm. Riv. Pow. Co. (par 25)	49	..
Hartford Carpet Co.	..	100
Hart. Electric Light Co.	150	..
Hartford Gas Co. (par 25)	48	..
Hart. & N. Y. Trs. Co. (par 25)	25	..
Hart. W. Wire M. Co. (par 25)	20	25
Holyoke Water Power Co.	320	..
International Silver, com.	7	8
International Silver pf.	40	45
Johns-Pratt Co.	106	..
Landers, Frary & Clark (par 25)	42	47
J. R. Montgomery Co. 666	93	100
New Eng. Cot. Yarn pfd.	98	101
National Machine Co., (par 25)	15	25
Peck, Stowe & Wilcox, (par 25)	28	..
Plimpton Mfg. Co.	..	120
Pratt & Cady Co	80	100
Pratt & Whitney Co. pf (new)	70	80
Rock Mfg. Co. (par 500)	475	..
Rus'll & Erwin Mfg Co (par 25)	63	66
Smyth Mfg. Co.	300	375
Stanley Rule & Lev. Co. (par 25)	73	..
Stanley Works (par 25)	63	67
Swift & Co	103	..
Torrington Co., pfd. (par 25)	27½	..
Torrington Co., com. A (par 25)	27½	..
Utica Cement Co., (par 25)	1½	..
Union Mfg. Co. N. Brit. (par 25)	36	40
United States Env. Co., pfd.	88	92
United States Env. Co., com.	40	..
Western Au. Mach. Screw Co.	250	300
Whitlock Coil Co.	60	..

OLD SAYBROOK.

Miss Sarah G. Granniss is spending a few weeks in New York.

Mrs. Robert Chapman left yesterday for a week's visit in Hartford with her sister, Mrs. C. L. McMurray.

Elbert H. Clark, assistant postmaster, is ill at his home, and Benjamin H. Chalker is supplying his place.

Mrs. Edmund C. Spencer is in New York, as the guest of her sister, Mrs. John Wood.

The first of the course of entertainments to be given by the Saybrook Town Improvement Association occurs this evening, when Charles F. Underhill of New York will read "The Rivals."

Rev. Gurdon F. Bailey of Westbrook will preach in the First Congregational Church Sunday in exchange with Rev. Edward E. Bacon.

Miss Mary L. Griggs, teacher of No. 3 in the graded school, has returned to her work after a week's illness. During her absence Miss Arrietta H. Acton had charge of the room.

The funeral of John F. Bushnell, who died Tuesday morning, will be held at the First Congregational Church tomorrow afternoon at 2 o'clock.

STAFFORD SPRINGS.

Timothy Collins, who lives at Stafford Hollow, was before the borough court yesterday afternoon charged with breach of the peace and assault upon his daughter, Julia, who keeps house for him. He pleaded not guilty. Tuesday night about 10 o'clock Collins appeared in her room, and began to light matches, because he thought he saw and heard some one in the room, he said. He is, however, very deaf and his eyesight is greatly impaired. His daughter fearing that he might set fire to the house, got up and thereupon, it is said, he seized a pocket knife from the window sill and threatened her. She immediately went to the nearest neighbor where she remained until yesterday afternoon when the accused was brought before the court. The only defense made was the claim that his daughter was receiving company at improper hours and that was his reason for visiting her room at that time. Judge Parkess found him guilty of breach of the peace and sent him to the Tolland jail for thirty days.

LOCAL MARKETS.

Pillsbury's Best flour has gone down price this week from $5.50 a barrel $5.35. The prices of fish that come fro Massachusetts are still high on accou of the storms there. White bait has be added this week at 40 cents a pound a pompina at 30 cents a pound. The pri of sea bass has gone down from 18 cen to 15 and the price of white perch h gone up from 15 cents a pound to 18 cen The meat list remains the same as la week and the only change in the vege ble quotations is that southern stri beans have gone down from 20 cents quart to 18 cents. The prices in gene follow:—

GROCERIES

Corrected by Newton & Robertson 333 and 342 Asylum street.

Baking Powder—
N. & R. 30c
Cleveland 40c
Royal 40c
Cream ....35c.
Rumford's 30c
Butter—
5 lb. box Simsbury Creamery $1.50
5 lb. box Gilt Edge $1.75
Creamery—
Firkin ....26@28
Wapping 32c
Bay State ....32c.
Maplewood 30c
Candy—
Fancy ....10@40c
Candied Peel..
Cheese—
Plain ....12½@14c
Rich Old....20c
New Crown 18c
Young America....15c
Pineapple, each 50c., 90c.
Sage 20c
Brie Cheese....25c
English Cheddar 40c
English Dairy....22c
Cream, each..10@20c
Roquefort 45c
D'Isley, each....22c
Edam, each 90c@$1.00
Neufchatel, each ..5c
Chocolate ....35@38c
Cider Vinegar, gal. 20@25c.
Lemon Peel ....25c.
Orange Peel....25c
Citron ....20@25
Coffee ....25@40c
Crackers—
Plain ....5@10c
Fancy ....10@20c
Cracked Wheat ...5c
Eggs—
Domestics ....30@35c
Prunes ....7@25c
Silver Prunes 15c
new Sweet cider, gal. 20c.
Mince Meat—
Package ....3 for 25c

Flour—
Washburn, Crosby & Co ....$
Buckwheat, 1b....
10 lb. $
Rye, 10 lbs. for..
Pillsbury's Best
Charter Oak....
Graham, 10 lbs. for
French Peas, Gla
Beets, Glass....
Hominy, 2 lb box
Hominy, 5 lb. box
Macaroni, 1b..10
Molasses—
Gallon ....
New Orleans ....
Oatmeal—
Pound ....
Quaker (rolled) 2 lb. box
Rolled Oats .... 10 for
H. O. Oats ....
Raisins ....
Table Raisins, 2
Sultans 2
Syrup—
Best White, gal
Gallon ....
Maple, gal....
½ gal ....
Sugar—
From 6 to 8c. lb
New Comb Hon 18@20c. be
Strained Honey, 18@18c. gla
Tapioca, 1b....
Teas—
Oolong, 25, 40, 60, 7
Very finest Formosa ....
English Breakfast ....50@6
Ceylon ....80@
H. O. Buckwheat 15c pkg
Streets Buckwheat

FRUITS.

Dates, 3 lbs....25c
Figs ....12@20c
Lemons, doz 20@30c.
Olives (glass) 10@85c
Olives, gallon ..$1.85
Nuts, lb.— 25@28c
Brazil Jumbo....15c
Almonds 25c
Paper Shell ....30c.
Fancy mixed Nuts, 18c., 3 lbs for 50c
Pecans ....15@18c
Oranges, doz, 25@50c
Grape Fruit 10@20 each
Pineapples ...15@25c.
Tangarines 50@60 dz
Mandarines, 40@50 dz
Winter Nellis Pears. 50@75 dz
Bananas. 10, 20, 25, 30c.
Eng. walnuts 18c
Cal. Limes ..18c. doz.
Malagas, 10, 20@25c. lb.
California Pears, 20c. quart.
Apples, ..30@40c. pk.
Apples, Fancy Table 40@60c. pk.

MEATS.

Corrected by Newton & Burnet, 319 Asylum Street.

Beef—
Roast, shoulder, 12½@14c
Rib ....20@25c
Rib, short cut....25c
Rib, cut long 18@22c
Loin roast....25@35c
Short steak....25@35c
Boston rump....28c
Round steak .18@20c
Shoulder ....12@14c
Shoulder clods, 14@16c
Corned beef....4@18c
Sirloin steak..20@28c
Dried Beef ....25@30c
Beef liver 10c
Smoked beef..25@35c
Beef tongue 20c
Smoked 25c
Lamb—
Spring Hind Quar. 18@20
Fore quarter 12½@15c
Leg ....15@18c
Chops ....15@25c
Lamb plucks....10c.
Mutton—
Hind qurs....15@18c
Leg 18c
Fore quarter..12@14c
Shoulder ....12@15c
Veal—
Cutlet 28c
Chops. ....15@25c
Stewing ....8@15c
Roasts ....14@25c
Sliced Ham 25c
Calf's liver....30
Calf's tongue....10
3 for 25c
Calf's heart 5c
Calf's head and feet, per set @$1.50
Sweet bread 60c
Tripe, plain, lb....5
Honeycomb 10c
Pork—
Hams ....12½&15c
Shoulder ....10@11c
English bacon ...22c
Bacon ....18@20c.
Pork Chops....14c.
Sausages ....12@14c
Salt Pork ....14c.
Pork Roast....12c.
Bologna ....10@14c
Ham bologna 13@20c
Lard—
Pure Leaf ....11@12c
Com. 10 lb. tubs.75c
Turkeys ....18@23
Poultry—
Roasting chickens 22@25c
Fowls ....18@20c
Squabs—
Natives, doz. $3.50, $3.75
Philadelphia, $4.00 to $4.50
Spring ducks, lb. 22@25c.
Grouse ....$1.75 pair
Ph. Chickens....28c
Capons ....30c.

VEGETABLES.

Water cress bunch, 10c
Cucumbers....25c ea
Mint, bunch....5@8c
Parsley, bunch 5@8c
Beets....8c bunch
Raddish, bunch 5c each
Sweet Potatoes 50 c. per peck
Potatoes, bush 85@$1
Celery ....15c bunch
Marrow Squash 3c. per pound
Potatoes, pk 25c
Cauliflower, head.50c
Carrots ....3c per lb
New Cabbage 5@10c. ea.
Southern String 18c. qt.
Egg Plants....20@25c
Lettuce ....15@20c

FISH.

Corrected by Clark & Crane, 323 and 325 Asylum street. Hartford, Conn.

Salt Water Fish.
Halibut, lb....25c
Cod, lb....15c.
Haddock, lb....10c.
Striped Bass....30c.
Sea Bass....15c.
Bluefish ....15@20c.
Sea Trout...12½@15c.
Eels, lb....15c
Flounders lb....10c
Spanish Mackerel 30c.
Salmon ....35c. lb
Blackfish ....18c. lb.
Codfish Tongues..15c
Smelts ....15@20c.
Mackerel....30c. ea.
Fresh Herring.40c dz
Fresh Water Fish.
Catfish 15c
Pickerel ....20c.
Shad ....30c. lb.
White perch....18c.
Pompina ....30c. lb.
White bait....40c. lb.
Whitefish 20c
Shell Fish.
Lobster, live, lb. 22c
Boiled Lobster...25c
Oysters ....35 qt
Counts ....45 qt
Natives ....60 qt
Round clams ...35c
Long Clams...30c qt
Round clams, large. peck 60c
Round clams, medium, peck.... 60c
Long clams, pk..60c
Round clams, little neck, peck....$1.00
Shell Oysters..60 pk
Blue Points....75 pk
Salt and Smoked Fish.
Salt Mack'l No. 1. lb. 20c
do. No. 2, lb——10c
do. bloaters, lb.25c
Salt salmon, lb..15c
Sm. halibut, lb...20c
Sm. salmon, lb...30c
Salt codfish, lb.12½c
Sm. herring, doz.10c

PRICES FOR FARMERS.

Ducks, lb ....16@17c
Fowls, alive....11c
Eggs, doz 25c
Lamb 9c
Spring lamb....8@9c
Beef, native, lb
Mutton ....8@9c
Lettuce, doz...50@75c
Parsley, doz....40c
Squabs ....$2.50@$3
Veal, live, lb....5@6c
Veal, dressed....10c
Potatoes, bush. 65@75c

FLOUR, GRAIN, FEED AND HAY.

Reported from
Smith, Northam & Co., 129 State Street.

GRAIN, CAR LOTS.

There has been very little change in the wheat market for a week.

Corn and oats are higher especially for the cash grain.

Feed unchanged.

Hay holds very firm.

Clipped Oats ....34@36
Yellow Corn, new....47½@48

FEED.

Fine Middlings $18.00
Spring Bran $18.00
Gluten Meal $25.50

HAY.

	Small Bales.	Large Bales.
Choice Timothy	$19@$20	
No. 1 Timothy	$19	
No. 2 Timothy	$18	
No. 3 Timothy	$17	

STRAW.

Long Rye ....$17.00@$17.50
Short Rye ....$14.00@$14.50

CHESTER.

Scarcity of rain this winter and the continued cold were responsible for the shutting down of the factories on the Deep Hollow stream yesterday.

Mr. Beebe of Essex, who gave a phonographic concert at the Baptist Church Tuesday evening, was a loser by it, as he accidentally dropped a case containing a supply of new records and destroyed $15 worth of them.

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SYSTEM of LAW

in, a

Series of Lectures,

Delivered, ore tenus at Litchfield (Conn)

From June 1808 to September 1809 by

TAPPING REEVE ESQ.r JUDGE of the SUP.r COURT

&

JAMES GOULD ESQ.r ATTORNEY AT LAW.

Taken down in notes at their offices in Litchfield and transcribed

In three Volumes - Vol. IIII by

ELI WARNER

No Notes

Powers of the Court of Chancery

Chancery

The jurisdiction of the court of chancery has been
~~said~~ to be different from the courts of common law
in that it abates the rigour of the common law. 2d
It decides according to the spirit of the rules of law and
not the letter. 3d It has a peculiar cognizance of fraud
accident & trust. 4th It is not bound by precedents or rule.

Chitty 5
3 Bl. Com. 47
1 Vol. ab. 375
3 Bl. Com. 430-

This definition is indeed very inadequate for altho in
some cases it does abate the rigour of the com. law yet
in many cases its jurisdiction does not extend far enough
to give relief in cases of hardship as when an insolvent
debtor devises lands away from his creditors to their manifest
injury or when an estate goes to collateral kindred how-
ever distant or even ~~of~~ heat back to the lord to the exclusion
of lineal ancestors and Brothers of half blood. The court of
chancery in these cases cannot give relief nor can the court
of common law. As to the second part of the definition viz
that it decides according to the spirit of the law - this is
one and always has been done by the courts of C. Law
so that there is not a single rule of interpreting laws but
what is applicable to the courts of law as well as equity.
As to the third part of the definition in case of fraud every
species of it may in some form or other be cognizable in
courts of com. law. whereas they are not cognizable in many
instances in chancery such as fraudulent devises &c. In case
of accident the courts of C.L. as well as Ct. Chan. may

2 Atk 239

3 Bl. Com. 431
12 & 61 Doug. 264
Watts. par. 97-98

Pow. d. 691
1 P.W. 287
3 Atk 177-541

12516

Powers of
III Bl. Com 431
5 Coke. 74
3 Rep 151

in many instances give relief and in some the Chancery itself can have no legal jurisdiction. if a bond be lost it comes with in the jurisdiction of the courts of C.L. to give relief Where contingencies make it impossible to perform conditions stipulated in a bond the courts of law may have jurisdiction. But in case of mistake the C.Chan. may give relief many times when courts of C.L. cannot - thus mistake in written instruments are aided only in chancery because the course of proceedings in common law will not admit of trial. as if a bond be by mistake executed for

1 Vow. C. 433
2 A. 31-203
3 Bl. Com. 431
3 A. 389
1 Vesey 318
1 Brown. Chan. 341
2 Vesey 376

2000 ℔ instead of one thousand - here the court cannot support the contract and the jury are incompetent to the trial. as to technical trusts the C. Chan. has jurisdiction in some but in most cases the courts of law have also as to the 4th part of the definition concerning precedents & rules they are bound by them as much as court of law and have no more authorised to depart from them than any court whatever - as refusing the wife her dower in trust estate yet allowing the husband his

Wythe & Lom. 2 No. 415 - 419 - 1 Da. En - Pow - Mont 112-321. - 2 Vo. 340

curtesy - is supported alone by former determination

1 A. 604 - Wythe 4

The court of chancery is distinguished from other courts by its mode of administring justice or of giving effect to the same principles. that is, principally in mode of proof, mode of trial & mode of relief - 1st The C. Chan. may compell either of the parties to give evidence upon oath, to discover facts which are not supposed to be known by any one else

Chancery

But if in the courts of law either of the parties were forgd by oath the Stridium jus of d^e^ court might take advantage of d^e^ oath.- as if the defendant should criminate himself but in Chancery if d^e^ party does criminate himself the court has not cognizance of it and the other party is moreover enjoined not prosecute for any oath criminating his adversary. After having obtained evidence by forgery upon oath the mode of proceeding is the same as in court of Law. In all actions of account the oath of the parties is admitted in courts of chancery. as to the mode of trial interrogatories may be administered to witnesses by proper authority and committed to writing which may be read in court as evidence — but in Connecticut these depositions can only be taken when the witness is out of the State or is about to go out of it or lives more than twenty miles from court or is infirm - and in case of an infirm person by the deposition is taken de bene esse — that is provisionally to be read in evidence provided the trial should be deferred till after the death of the witness. as to relief a court of chancery in many cases affords specific relief that is reinstates the party in his original right where courts of law could not. Chancery may intercede and prevent trespass but a court of law can only give damages or some cases triple damages which would frequently be a very inadequate reparation for the injury sustained In suit of a bond with conditions the penalty at law is forfeited but in chancery the obligee is not bound by the

3 Bl. Com. 381-
382.-437.-449

2 P. W. 145

2 Vern 277

2 P. W. 148

3 Bl. Com. 437

3 Bl. Com. 382-3

Mitf 130.

2 Swift 254

C.L. 3 Bl. Com. 383

3 Bl. Com 438

1 Eq. Cas. ab. 16

1 Ld. Ray. 532.-5 Mod. 215

1 Sid. 424.

3 Bl. Com. 434-8-9

1 Vern. 308

Powers of this specific penalty but only the sum expressed in the conditions with such interest costs &c as shall appear reasonable & the court. so that the penalty is in effect nothing only terrorem poenae or minimae poenae. In the construction of law there can be no propriety in saying that the court of Chan. differs from Court of Law. the mortgage being in the nature of a penal bond are almost exclusively within the jurisdiction of the court of chancery for on failure of performing the conditions of a mortgage and the whole estate mortgaged is forfeited after the specified time of payment in courts of Law but in

3 Atk. Com. 459 chancery no more of the estate shall be received by the mortgagee than will make him compensation.

2 Bl. 645-668 Technical trusts also afford extensive ground of jurisdiction in Courts of chancery. Technical trusts are where the legal title is in one person and the beneficial interest is in another. Courts of law may enforce legal title but that which concerns beneficial interest belongs exclusively to courts of chancery. Mitford has gone further in pointing the difference between Courts of Equity and Courts of law and their respective jurisdictions than Blackston or any other writer. He says the C. Chan. may enforce justice when positive law is silent and that it may abate the rigour of the law when such rigour is a collateral and unforeseen consequence of the positive rules of common law. Yet if the rule is obvious and plainly intended

for the case in hand it cannot interpose to give relief — Chancery.

By common law all ~~marriages~~ contracts made between — 6 Co. Eliz 65 b
the parties before marriage became void by marriage but — 1 Ves. Jr. 278
contracts made between the parties in contemplation of — Atk. 3-4-105
marriage are valid in chancery. — By decree of chan. — 2 Pow. 5-6
specific performance of marriage settlement agree- — Ld. Ch. 172
ments may be enforced. If the husband execute a — 1 Ves. Jr. 88-95-4
bond, ~~for~~ before marriage for the settlement of an estate upon his wife and — 2 P.W. 243-2 Atk 97
children it may be enforced during his life by chan. — 1 Pow. 316. Rob. 216
and after his death by courts of law. An agreement — 1 Salk. 325-5 Ves. Jr. 381
made during coverture is by com. law void and formerly — 2 Bay. 515-1 Pow. 442
by chancery unless ~~by~~ made by trustee. But now the wife may — 1 Ves. Jr. 5-2 Ves. Sect. 158
not only hold estate conveyed to her in this way but may — 1 Ves. Jr. 94-5-1 Wheat. 22
dispose of it as she pleases. Contracts between husband and — 3 Atk. 372-2 Vesey 308
wife during coverture cannot be enforced in chancery — 1 Vern. 244-1 Pow. C. 444
in this State therefore our chancery follows the Com. L. — 2 Vesey 191-665-336.
rather than the Chancery of England. Where contracts — 452-1 Ves. Jr. 112
between husband and wife are made without ~~a~~ valuable — Dis. Ca. Ch. 221
consideration with intention to defraud creditors — 1 Ves. Jr. 95-13. 64.
they will not be enforced even in chancery — but contract. — 22-3 P.W. 339
made without adequate or valuable consideration ~~etc~~ etc — Coop. 708
not conclusive evidence of fraud. When a husband being — 1 Atk. 15.
greatly indebted makes conveyance to his wife it is a — Ves. Jr. 262. 2 Bay. 218
badge of fraud and contracts so made made may be set — 3 Cook 82
aside by chancery — such contracts however are — 1 Vern. 132-464
binding upon the husband and his representatives

6. Power of The court of chancery adapts to the substantial objects
1 Ves. 515 of contracts without strict adherence to the form or let-
2 Vern. 371-4 -ter of them. If one or more of certain co obligors dis-
3 Thep. 423 -charge the obligation the person or persons so paying may
3 Bro. 701 in a court of Law in the name of the obligee have an action against the other co-ob-
Hard. 164 ligors and the court of chancery will enjoin the defend-
8 S. Rep. 166 ant not to plead payment of the obligation or will
compell them to pay their proportion. The L. Chan. having
thus enjoined him not to plead payment an action
of indebitatus assumpsit will lie at common law
for the recovery of surplus payment — The same will
be the case in an implied agreement to discharge an
2 Vern. 494 obligation or bond. Equity is extended in every case where
1 Vesey 204-444- where either the subject or parties are within the local
454 — limits of jurisdiction of the chancery — or rather where in such local limits the case
requires the interposition of Equity. When the property
and one of the parties is in England it is an action in rem
1 H. Bl. 31 When both parties are in the realm and the property out
2 Bow. C. 8-9 it is an action in personam In both cases they are
3 Atk 275-557 within the jurisdiction of the L. Chan. Where courts of
1 Atk 543. law will only give damages for non performance
2 Bow. C. 14-16 of contracts the enjoining of the specific performance
1 H. Bl. 139 falls within chancery jurisdiction. And when the
2 Freeman 217 court of L. will not give damages the court of Chan.
Amb. 406 will not decree a specific performance - because this
1 K. Ca. 521 court is only intended to aid the remedy given by L.

Chancery

Courts of Chancery will not generally enforce voluntary agreements i.e. agreements without a valuable consideration because Courts of law will not give damages i.e. they are not binding by C.L. Specific performances of contracts also generally are enforced yet in some cases they are not even when damages may be recovered at C.L. — as where an executory contract is made for the conveyance of an estate between A & B and C not knowing of this acquires a legal title by express deed the executory contract shall prevail in chancery altho damages may be recovered by C. the legal possessor. Here one of the purchasers has as good a title by equity as the other — and it is a rule that where equity is equal law shall prevail — but the alienor after the executory purchase had no right to dispose of it as he did to C. If A bring into court of chancery a bill for compelling B to make conveyance of land where the title is under embarrassments altho damages may be had at C.L. yet the C. Chan. will not enforce the specific performance of the contract. No damages are recoverable at C. law when a feme sole in contemplation of marriage binds herself in a contract to convey lands to the intended husband yet C. Chan. will specifically enforce s^d contract. It is obviously improper that there should be an action at law between husband and wife. At law the wife is bound to the extent of her contract but in chancery to the extent of her property only.

1 Pow. C. 241-242
1 H. 10
1 Vez. Jr. 450-74
1 Atk. 738
1 H. Bl. 359
1 Ves. 429-282-279
1 Ft. Bl. 178
2 Ves. 201
2 Pow. 54
1 Pow. C. 161
2 Pow. C. 16 —
254-257
2 Ves. 245

Chancery. An infant fem sole in contemplation of marriage may
1 A. Bl. 68-9-Sel. Ca. with consent & parents & guardians convey estate to her
607-2 Vern. 244 husband. Courts of chancery will consider the lender of money to an infant for the purchase of necessaries in the same
2 Pow. 258 situation as the one who furnishes the necessaries and will
5 Mod. 368-1 Bac. 558 therefore enforce the specific performance of contracts when
1 A. Bl. 68 the money is actually laid out for necessaries. When con-
2 Pow 14 tracts are made by order of chancery they will be enforced specifically courts of common not being empowered to interfere. Where a contract or obligation becomes void
10 Mod. 515 at by the Common Law ~~as when~~ by the obligee appointing the obligor his executor Courts of chancery will compell a spe-
3 Mod. 62 cific performance towards the executors of the testator but the executor may withhold from the devisees. It is said by Powel that where the agreement is not inoperative at C.L.
2 Pow. 17 but by some formal defect no action can lie at C.L. Courts
1 Pow. 243 of Chan. will enforce the specific performance of the contract.
3 Ch. A. 607 By formal defect must be understood not a defect of words in the contract but contracts made as those just mentioned. Chancery will not decree specific per-
1 A. Bl. 28-139 -formance when adequate remedy may be had at C.L. and
1 Brown. ch. 341 a plea in abatement or a demurrer to the jurisdiction may be thrown in by the defendant in such case. Courts of Chancery may proceed to give
1 Vesey 447 damages in an action which at C.Law could not be sup-
2 Eq. Ca. Ab. 19 ported ~~in this~~ for the want of evidence de bene esse or dep-
1 Pow. 570 -osition. C. Chan. may give damages also where fraud-

is mixed with damages – as where A. brings an action against B. for breach of covenant (which by C.L. is cognizable and damage liable to be given) and B files a bill of fraud in chancery against A if fraud be not proved the court may give damages. (unless B. demurr) – Courts of Chancery will not in general decree specific performance of contracts respecting personal property because damages in C.L. are an adequate remedy. But where the ends of justice plainly require specific performance of contracts of personal property C. Chan. will enforce them – as if A covenants with B to perform certain acts towards a third person – a friend, heir or the like – also where different installments are due on an obligation or bond and a suit after on every installment is necessary at common law chancery will give out executions for the whole bond at once. But if the agreement or contract be respecting lands or personal property specie it will come under the cognizance of chancery. In case of contract for the conveyance of land if one party be admitted to chancery the other must be also. – the covenant must be specific and not general – that is the land must be particularly described. – He who brings a bill into chancery to compell specific performance must show that he has performed or is ready to perform his part – or something equivalent it being a general rule that he who seeks equity must do equity – as where A agrees to

1 Bac. C. 526
2 Pow. 216
Gilbert Rep. 227
1 Ves. 447
2 Eq. Cas. 19
1 P.W. 570
3 Ath. 883
1 Vern. 189
1 Eq. Cas. Ab. 393
2 Pow. C. 217
1 Vern. 201
3 Ath 583
1 Bac. 526
1 H.Bl. 27 –
2 Pow 219
1 Pow 282
2 Pow 219 –
1 H.Bl. 559
1 P.W. 450
1 H Bl. 185
1. Chan. Cas. 302
1 Vern. 87
2 Pow 19
Salk. 172

Powers of

2 Bro. C. C. 19
1 H. Bl. 385
Gill. Eq. Rep. 188
2 Free. 35
Ver. ch. 448
Skin. 287

2 Pow. 26
1 Eq. Cas. ab. 70
1 H. Bl. 385
1 Vern. 210
Gow. Chan 312
Gilb. Eq. Rep. 70
Salk 112 - Hob. 88

1 Bl. Rep 1312
4 T. Rep. 761
1 H. Bl. 384 - 1 Vern. 240
20 H 68 - 220 - 610
3 Sw 40 - 1 Bro. Ch. 201 328
2 Ves. 299 - 2 Vern. 276
484 - 2 Pow. 262 - 2 Pow 82 -
1 H. Bl. 321

say B 200 £ on condition that he marry his daughter and settle a jointure of 600 £ upon her within 2 years - but before the 2 years were up the wife dies without having the jointure the court would not decree specific performance. The chancellor may or may not interpose in enforcing specific performances at his discretion but must give the same construction to the law as courts of Law do. It is a rule in equity concerning contracts and agreements that they must be decreed to be performed on both sides - and in toto or not at all - therefor plaintiff in Equity may by subsequent event be barred of specific performance. - But when the plaintiff has done as much as he could towards performing his part as where the plaintiff was to export and import a cargo and receive freight for the imported cargo only - and there were no goods to import the court decreed specific performance for otherwise the plaintiff must have suffered great loss This construction may be put upon the law in such cases. win in courts of Law — Chancery will not interpose when the contract is discharged by parol. . . . . When there has been an unreasonable delay in the plaintiff by not presenting a bill to chancery it is presumed to be a waiver of his right to a specific performance - and the court will not act upon the bill unless it can be explained satisfactorily to the chancellor

Delays may be so explained as to rebutt the presumption of waiver as where a merchant delays performing his part of the conditions by reason of his capitals being employed in foreign countries to great advantage. But no length of time will prevent ~~the~~ Chancery from relieving against fraud - In other cases a court of law will relieve in part, but as to fraud they cannot. Therefore chancery will not presume a waiver in case of fraud - as if the writer of a bond or note unknown to the other party, puts 1000 for 2000. &c If the plaintiff has trifled or shown any backwardness in performing his part of the agreement equity will not decree spe. perf. especially if circumstances are altered in the meantime. Etc to marriage settlement agreements there is a difference between them and all others for in cases of this kind Plaintiffs may bring their bill in Chancery altho they have not performed the conditions of the agreement. As where the husbands father in consideration of the wifes portion agrees with the wifes father to make a settlement upon his son — Spec. perf. may be enabled by the husband or wife in case the conditions of the other party are not performed because the husband or wife is not insured for the non performance of the other party neither of them being parties to the agreement. Where agreements cannot be performed according to the words by reason of the act of God the law shall nevertheless perform it as near the intent of

2 Vern. 276-484
2 Bro. 260
1 H. Bl. 321
2 Ch. H. 610-2 Ab. 82
1 H. Bl. 322
Viner 186
1 Ch. H 12-4 Br. C. 529
1 H. Bl. 584
1 Ch. H 627
1 Brown. Par. Cas 27
5 Viner 538
2 Bro. 260
Pr. Chan. 445
1 Vesey 377
2 Bro. C. 16
1 Bro. 448
Plowd 184
1 Eq. Ca. 18

Power of the agreement as possible. If A binds himself to B
3 Br. Pan. Cas 589 to make a settlement on B's wife and the issue of her body
2 Bl. R. 751-2 Rep 254 all the the wife dies before a settlement is made yet the chil-
2 H. Bl. 581-463-1 Ves Jr dren shall have the settlement. Where a statute renders
219 b 352-1 Atk. 195 a contract unlawful it is repealed of course. Where a
~~grant is made~~ covenant for the conveyance of estate & more is con-
veyed than was specified in the ~~grant~~ covenant — or where one enters
Cowper 748 into a contract for the conveyance of more estate than
1 H. Bl. 212 he possesses equity will construe the agreement to extend
2 Term Rep. 252 to as much & no more than he possesses or is legally
1 Coke 99 able to dispose of. Courts of Law & Courts of Equity may
Fern. Con. Rem 25 construe agreements which are literally the same
17 Bl. 399-5 T.R. 295 differently. as where a contract is made for an estate
320-7 T.R. 533 in tail &c where a settlement is made to A for life and
6 T.R. 38-8 T.R. 516 remainder to the heirs of his body — courts of law would
2 Powell 41-16 Ves 392 in all cases account this an estate tail but in equity
2 Fern 658-2 Bro 349 the father cannot prevent it from descending to the
3 Bro Parn. 327-1 Ves. 288 heir but if it were in tail he might. Although power
6 Atk 295 — of making agreements either executory or written does
Talb. Cas 276-1 Bro 336 not make the agreements — the court will rather than
123-2 Bro 349-2 Vern. construe the agreement literally regard the real intent
658-1 Ves 258 of the executory agreement. if an agreement be made
3 Ch 571 after marriage according to an executory agreement
Talb. 20 before marriage it may be set aside in chancery
but if marriage settlement agreements be made before
marriage they cannot be set aside by chancery

It is a general rule that Courts of Equity consider Chancery
that done which ought to be done and at the time 1 Eq. Ab. 359
when it ought to be done - this is called "omnipotent rule" 2 Ves. 630-Ves. jr.
Executory contracts become specific lien upon the subject
of them (that is upon the property) — the vendor becomes
trustee for the vendee — the vendee has the equitable
title, the vendor the legal title — and in chancery the
vendor is compellable to abandon his legal title and
transfer it to the vendee. If a binds himself to lay 2 Vern. 83
out money in real estate and then dies, his heir or 2 Atk 307
as the case may be his devisee shall take the money as Salk. 154
real estate instead of its going to the executor as part- 2 Vern. 536
sonal assets. If a woman articles with her intended husband to her 1 Ves. 195-196
of real estate before marriage afterwards marries
and dies before a legal conveyance the husband shall 1 H. Bl. 410
be tenant by curtesy. - But in case the husband had 2 Vern 536-585
by marriage such executory contract with the intended
wife & she could not after her death have dower out
of it - Money thus articled in a devise to be laid out Pr Ch. 320
in real estate passes under the denomination of real 1 P.W. 172-3 Ka. 221
estate and not of estate generally — the same is the 2 Vern. 6. 109
case where any personal estate is articled to be conver-
ted into real estate — but the agreement must be 2 Vern. 227
positive - and not as where A delivers money to B 3 Atk 225
with an agreement that B should lay it out in land
when a purchase could be made - here it is not personal estate

Powers of

3 Atk 258
1 Ves. 298

2 Ves. 639
Salk. 154
1 P. Wms. 384. 414

2 Wms. 411. 1 Dr. 61
1 Vern. Ch. 156
2 Rep. C. 64

this is a case concerning South Sea Stock where a specif. exec. not decr. because of prior rights

2 Wms. 217
1 Vesey 437

2 Vern. 79

2 Wms. 175
3 Wms. 221. n.
3 Atk. 256
1 Vern. ch. 223
2 Wms. 117
1 T. Rep. 413
2 Vern. 115

To where money is articled to be laid out in land or not at the grantee's election the election must have been made before the death of the grantor or it will keep under the denomination of personal estate

All these rules (under the general rule that a court of Chancery considers what ought to be done as done) will hold "è converso" - as where an agreement is made to convert land into money or personal estate chancery will decree specific execution and consider the land as personal estate - From what has been said as to executory agreements it appears that the vendee is liable for all the contingencies from the time of the executory agreement - as where an earthquake destroyed a plantation in the West Indies between the time of the executory contract and the time when legal conveyance was to be made. - Where the executory contract is not one of sale but merely of preemption or refusal the property is not vested in the vendee - he is not liable for contingencies. Where money by agreement is to be laid out in land ~~[illegible]~~ he for whose benefit it is made may if he pleases retain the money - as where a agrees with b to lay out money in real estate for the benefit of b's son - the son may retain personal estate or where a father agrees with son to lay out money the son may retain the money. - But this election is confined to the tenant in fee & dies with his person

The rule applies to those contracts only which can be specifically performed — — — The want of mutuality is a decisive objection to a decree of specific performance as to the amount of the consideration and so is uncertainty even in courts of law — as where B agrees to sell A certain lands for 1500£ less than ~~#~~ any one else would give A not expressly agreeing thereto — here were two objections to specific performance — viz no mutuality in A^o not agreeing to give any sum — and uncertainty in not knowing the exact sum which any one else would give. — But if the agreement was originally mutual no subsequent want will operate against a specific performance — as when an agreement was made for the exchange of an annuity and real estate — the annuity ceasing before the first instalment in this case specific performance was decreed — so where the consideration diminished by the falling of stock spe. perf. was decreed. Thus far as to specific performance of executory agreements.

Chancery

2 Pow. 235

2 Vern. 415

1 Eq. Cas. Ab 207

2 Pow. b. 232

1 Atk 10

1 Brun Ch. 156

Chancery will not allow a party to take advantage of the Penalty of a bond. Where a bill is brought into Chan. for the specific performance of a contract the non performance of which will incurr a penalty the Plaintiff must waive the penalty or the defendant may demurr — and the plaintiff is enjoined not to make any use of the defendants answer in Chan. for the purpose of recovering the pen. at law.

1 Vern. 60

2 Pow 204

Powers of
2 Br. Ch. 341
1 Bro. 171-2 Ver. 316
289.-304 520
4 Burn. 2228
Pow. C. 205
9 Mod. 113
2 Pow. 205
1 Vern. 68-9
1 J. B. 387
2 Pow. 205-6
1 Vern. 220
Barnard. 481
Pr. Ch. 160
1 Vern. 456

It is a rule in Equity that where the substance of the contract may be obtained without the penalty equity will relieve against it. Chan. regards the penalty as a kind of terrorem ~~at Common Law~~ in Chancery. The substance of the contract may be enforced when compensation may be made for the breach of contract by damages — as is the case with mortgages. When there is no rule of damages at law according to which courts of Equity cannot make compensation to the party injured — as where a lessee binds himself in a penal bond not to assign his lease — but afterwards does assign his lease here no damages can be assessed — Tho there be a rule of damages and by reason of intervening events the condition cannot be performed no compensation can be made — as where A agrees on conditions &c. to settle a jointure on B his intended wife within 2 years after marriage but before the two years are out she died without the jointure.

Where one party voluntarily stipulates an advantage to the other the latter will lose it unless he performs the conditions punctually as where a creditor agreed to take 10 £ less than his debt if paid at such a time if it is not paid at the time Chancery cannot relieve against the forfeiture of the whole debt — the penalty here being matter of justice. When Chancery will relieve against a penalty in favour of the obligee it will enforce

specific execution of the conditions and where Chancery Chancery
very will not relieve it will not enforce the specific per- 1 V. Ves. 141
mance of conditions. as if A covenant by a penal bond
to convey an estate interest within 6 month Chan: will relieve
against the penalty. Where the penalty is the substance
of the Bond or contract Chancery will not relieve a-
gainst the penalty. — It was formerly held (and is at 1 Br. Ch. 418
present in Courts of law) that the party might at his 3 Bea. 691
election perform the conditions or forfeit the penalty in 1 Ves. 171
all cases. but the rule at present is that where the Doug. 451
penalty appears to be a security for the performance of 2 Bow. 136
something collateral so that the enjoyment of the 2 Ves. 191
collateral .... is the object of the agreement a 2 A. 371
6. Chancery will relieve against the penalty — 2 Ves. 528
But when the penalty or sum to be forfeited is in the
nature of a fixed damages. when the penalty is 1 V. Ves. 142
not for security against breach of conditions but only a 4 Bur. 2228
compensation in case of a breach - as when a tenant binds 6 Br. Parl. Ca. 417
himself to pay 5 £ or 50 £ for every acre of land he shall 2 Vern. 119
plow Chancery will not relieve against this forfeiture 2 J. K. 32
for here the obligee has his election whether to forfeit or
or not — and chancery will not decree relieve of the penalty
performance of the conditions nor restrain from plowing
But if he covenants not to plow and binds himself by 4 Bur. 2228
a penalty Chancery will relieve from the penalty
and intercede to prevent pursuing the Remedy.

Powers of
1 Bac. 544-58-601
1 Ves. H. 130-con. 557
Lawson Rem. 25-6-Hal. 27
1 Ld. 442-2 Bow. 214.

The court may determine whether the forfeiture is in the nature of penalty or damages — Where damages are to be ascertained courts of chancery make issue to courts of Law that they may be assessed by a jury.

Courts of Equity have the power of setting aside contracts as well as decreeing their specific execution — where it does set them aside it does it specifically

2 Bow. 145 — 225

It is frequently the case that damages may be obtained in courts of Law for the non performance of contracts

Mon. Rep. Ca. 20
5 Vin 549

where courts of Equity will set aside the contract

2 Bow. 145

as in contracts fraudulently obtained. In many cases

2 Ves. 203
3 Bro. 290

also where Chancery refuses to decree specific performance it will not give relief or set the contract aside

Ibid. 356
2 Atk 324

(ib) the decree
It may be neutral or leave the party to such remedy at L. Law courts — as where a contract is unreasonably

2 Ves. 627

hard. This can be no ground for chancery to set aside the contract yet it may be presumptive evidence of

Talb. Ca. 41
2 Salk. 449

fraud — in all such cases unless fraud can be proved Chancery will not set aside the contract but dismiss

2 Bow. 145-188

the Bill. The same is the case with parole contracts.

It is a general rule that chancery will relieve against agreements obtained by imposed hardships and oppression altho unaccompanied with fraud. as where a

2 Ves 152
1 Atk. 727

mortgagee has taken advantage of the embarrassments

5 Bro. 294

of the mortgagor. But if the contract be agreed to or ratified the party knowing the extent of his rights or

that he could be relieved Chancery will not vacate the contract. In courts of law coertion if it does not amount to legal duress is not sufficient to set aside agreements but in equity it is otherwise. Contracts may be vacated which are obtained by any undue influence. — As where a guardian withheld his consent to the marriage of his female ward unless the husband would give up to him the profits of her estate. Filial fear cannot be considered a ground for setting aside contracts unless undue advantage be taken of the filial fear Equity will relieve against contracts which though not unlawfull — yet usurious and oppressive "a fortiori" as contract upon compound interest

Where the parties are equally disposed to defraud, — both guilty — particeps criminis Equity will be neutral and dismiss the bill except where positive law determines as where two parties sit down to the gambling table with the determination each to ruin the other party

Unfairness in the Plaintiff will be an objection to a decree in his favour and will in some cases be sufficient ground to set aside the contract for it is a maxim that the plaintiff must come into Chancery with clean hands. Suppression of material facts will be an objection to decree in favour of the one who suppresses facts and is as great an objection as the suggestion of a falsehood. As where one upon selling a piece of land represented the annual rent to be 90 £ which was

Chancery
1 Vez. 118-639
1 Att 11
1 Brown. Ch. 369
2 Vez. 165
2 Vez. 148
Comyn. 200
2 Vez 150
Talb. 41
1 East 98
3 Att 383
1 Vern. 227-229
1 Br. Ch. 440
Br. Ch. 539
5 Viner 553

Powis &c. indeed true but by a flood which run through it, it needed annual repairs to considerable amount.

3 Ves. Ch. 626 Where the parties act under a misapprehension of
2 Pow. 225 facts Equity will ~~compel to~~ set aside the contract or
1 Vesey 401 ~~dismiss the bill~~ (ie) If the fact misapprehended be the
cause of the agreement it will be set aside — But if a
contract be made in consequence of misapprehension
of the law Chan. will not interfere — altho there is a case
reported to the contrary where upon the death of the
Ch Ca 364 2nd of three brothers the two surviving submitted the
2 Pow. ... matter to a schoolmaster to determine to which the
deceased's estate ought to belong. upon his answer
that they by law descended they divided but afterwards
upon a bill presented by the dft relief was decreed and
the whole estate restored to the deft. We would think
this to be an erroneous judgment.

1 Pow. 341 Equity courts will not enjoin a voluntary agreement
2 Pow 242-10th 10, and because a court of law will give no sort of relief. —
1 Bram. 738. A compromise of a doubtful right is a sufficient
1 Ves. 126-2 Ves 200. consideration to support a decree of specific perform-
1 Pow. 142-10th 10 -ance. The case of the schoolmaster will not come
2 Atk 87-592 under this rule - because here the fact is supposed to be
1 Ath. 10. mistaken doubted and not the law. but even where the law is
doubted .....

Intoxication is not a sufficient ground for setting aside
a contract unless it appears that advantage be taken of it

intoxication by the other party – in which case it is found Chan. Ca. 17
if Deft pleads intoxication must set it may appear
Defendant may demur to the plaintiffs plea of intoxication 1 Vez. 19. 3 P.W. 130n

Weakness of understanding, if the party be legally com- per se 1 Vern. 29
-pos mentis is not a sufficient ground for setting aside
contracts. but may be a presumption of fraud and 3 P.W. 129
rebuttable by contrary testimony
be a means of relieving, for a small degree of fraud 1 Vern. 30

— Agreements which defraud third persons are 2 Vern. 165-176
always set aside in chancery and may be in courts of 1 Eq. ab. 88
law. In this respect courts of equity exercise a most reasonable Salk. 156
power — It where the father of each party in an intended 1 Vern. 345. 2 Ves. 575
marriage agree to settle upon the parties when married a mtge in law 45 R. 166. 2 Ves. 763
certain sum – and the husband or wife by a private contract 1 P. Wms. 512. 656-7
relinquishes a part to the father of either party – this con- 1 Brown. 95-286
tract is void. it is a fraud Contracts thus made with intent to defraud 2 Vern 176. Ves. 602-475
third persons altho ratified afterwards. are void ab initio. 1 Vez. 496. 3 P.W. 75

On the same principle marriage brocage contracts
that is where one makes a contract for the procurement 1 Burn. 474-5
of a wife) are void – because of fraud to third persons 1 P. Wms. 245
to the wife) — it is undue influence made use of – & radically
vicious. — these are at present void at law.

Contracts with heirs apparent for their expectancy 2 Vern. 181
are void in chancery – and this whether the heir be 2 Vern. 14-27
an infant or adult. — because of the tendency to dis- 1 P.W. 310
-obedience and vice. and to encourage disobedience to 3 P.W. 292 – 2 Ves. 125
parents. and if the contract is made even after the death
entitled
of the ancestor and the inheritance received it may be –

Set-offs

2 Vesey 159

1 P.W. 320

8 T.R. 292

2 Vern. 14. - 2 Pow. 183

2 Ves. 238

2 Pow. 259

3 Bl. Com. 304

4 T.R. 123

6 T.R. 156

2 H. Bl. 440

1 H. Bl. 657

Cowp. 56

Stat. Com. 150

2 Root. 42

avoided if it appear not to be made fairly, relished freely and under an impression that it can be set aside in chancery. but if made fairly, without compulsion and full information as to the extent of his rig. it cannot be set aside. Chancery will not enforce contracts which encourage oppression, extortion or immorality — as when the keeper of Bridwell made a contract alienating the office and profits of it. — the same in the case of Tapster.

Courts of Chancery exercise the power also of set-offs. In England this power is by Statute given to courts of Law — in Con. only to courts of chancery. Our Courts of law in action on an agreement consider 1st whether the contract is a good one & 2nd whether it has been discharged but they do not consider another contract held by the other party as going to the discharge of this. In this state the superior court have cognizance of all chancery cases of the amount of between 333 $ & 5333 $ according to the Statute but as the court have established a rule that in case of indefinite amount, the amount in the declaration shall be the criterion of cognizance — the Statute is almost a dead letter for in almost all bills presented to chancery the party may make up of any amount even less than the real value and recover the whole. A writ of error lies from our chancery to a superior court as from the county court to the superior and from the S. C. to the supreme court of errors — & no appeal — but in Eng. the reverse

The power of Chancery to issue injunctions — Chancery

The object of the prohibitory writ of Chancery is to restrain a person from doing or committing a thing which appears to be against equity and conscience. — 3 Bac 172-3

The injunction is usually issued against the plaintiff in an action at law to stay further proceedings in lawcourts because these equitable grounds are not a courts to. There can be no injunction in criminal cases, because criminal actions are not cognizable in chancery — actions in chancery are purely civil as to rights to estates & wrongs to be redressed. It may issue injunctions to stay waste as plowing meadow cutting timber where damages at law could be inadequate to the loss or injury sustained — So where an estate is held for life by A remainder to B the latter cannot bring an action of waste at law against a third person for damages in case of actual waste, but on which he may. so that the remainder man or reversioner is at law liable to be injured without adequate redress. In case of a Mortgages an injunction may be issued against the mortgagor in favour of the mortgagee prohibiting waste unless it be applied to the discharge of the debt for which the mortgage is made — else the mortgagor might diminish the pledge to less value than the debt — so an injunction, may be issued against the mortgagee in possession for committing waste else the mortgagor might not have a chance to redeem his pledge in its original state

3 Bac. 173 — a writ of prohibition issues where it is wrong not justice — 6 Mod. 16 — 1 Bro Ch. 57 — 3 Bl. Com. 458 — 15 Ves. 59 — 3 Atk. 124 — 2 Comy. 57 — 3 Bl. Com. 227 — nor can the reversioner — 1 Vern. 23 — 3 Atk. 94-723 — Vern. 450 — 2 Com. 51 — 3 Atk 723 — 1 Bro. C. 75 — in favour of mortgagor — 97462 L719 lr

Injunctions of Injunctions to stay waste may be issued against a
1 Vern. 23 tenant for life without impeachment for waste (that is
2 Shower 69 one who is not liable for waste committed) with remainder
2 Br. Ch. 89 to the first and every son in tail — prohibiting him
Amb 107 from pulling down the house or other buildings
Salk 161 thereunto belonging unless for the purpose of building
again — but he may fell timber or alter rooms in
2 Vern. 738 a house — the same power may compell him
1 Br. Ch. 454 - 1 Eq. 400 to repair waste as well as prevent waste.
Chancery may issue injunctions ~~to~~ to stay waste against
2 Comyns 50-1 him who hath the inheritance at law as trustee of
1 Eqn. ab. 221 the estate. Action at law will not lie against the tenant
after possibility of issue is extinct —
Injunctions may issue from Chancery to restrain
nuisances — as for obscuring ancient windows — at
2 Ves. 452 L. damages may be recovered but as they may be no
1 J. Bl. 29 equivalent to the injury Chancery has the power of issuing
2 Dow 266 injunctions to prevent the obstruction. - Ancient lights
1 Vesey. 543 in law signify those that have been erected a long time
extend beyond the memory of man — The right to
such ancient light is grounded on prescription or agreement
If the jury find that one has had the enjoyment of lights
for a considerable time they form one an agreement. So
3 Bac. 174 that the lights may not be ancient within the meaning
2 Rol. ab. 139 of the term in law. An injunction may issue also to
3 Att 750 prevent building on another ground

Injunctions

But it must be a nuisance within the meaning of the common law and not a common trespass - it must be continued trespass as where one digs a ditch across another's land - The erecting a peek-house contiguous to another land is not by the bk. a nuisance. etn action which in its inception may be a common trespass may become a nuisance by being repeated or continued. Injunctions may be issued also to prevent the plaintiff from proceeding at law — or to suspend the trial at law — as when the defendant at law makes use of his adversarys answer in Equity Chancery may issue injunctions where many actions are liable to be brought upon the subject-by inserting the names of different Plaintiffs at each action Also to quiet a person in the peaceable possession of his estate when he has a certain equitable title in cases of numerous actions of ejectment.

- To prevent a multiplicity of suits - as in cases of dispute between a number of proprietors concerning the boundaries of their land - here chancery may unite them in one and the same action by a bill in Equity. In the case of Boardman & Seymour in February term 1808 where two & three partners brought an action of account the declaration was demurred to because the partners were not all in the suit and therefore another suit might be brought. —

3 Ott. 750
15. Ves. 29
3 Ott 21
2 Cowy. 52
2 Cha. Cas 66
76-93-
6 Bac. 174
Ab. Eq. 261
1 Brunn. Cas. 266
1 Vern. 156
2 Ott 282
4 Bac. 174
Mitf 4-104-125-8
1 Vern. 22-36-276
1 Ott 282-
2 Do 484

Injunctions
1 Sid. 179
1 Ch. 285
5 Term Rep. 93

To restrain executors from acting — or meddling with the assets when there is a dispute as to the executorship. To restrain one from the publication of writings which another has an exclusive right to publish & vend — and other inventions. There appears to have been much dispute in the celebrated case of Millar & Taylor (4 Burr.) on the subject of publication. 1st whether by the common law an author had the exclusive right of publishing & vending his works — this was decided in the affirm. 8 Judges to 3 ——

Amb. 164
1 T. Rep. 30
Dick. 124
1 Ves. 120-275-127
4 Burr. 2303

2nd Whether the author did not abandon his right by once publishing his writings — decided in neg. 7 to 4.

3 Whether the common law right was taken away by the Statute of Anne. (of which our law of patent right is almost a transcript) allowing the author the exclusive right of publication for 14 years & he be alive for 14 years more — the last point was decided in the neg. 6 to 5 with Lord Mansfield on the minority.

The End
of Rules of Chancery

Mercantile Law Mar. 25th 1820

The Mercantile law or Lex Mercatoria as it is sometimes called is said to consist of certain customs & usages which have obtained the sanction of long & uniform practice & decision in the courts of Westminster. — By an examination into these cases it will be found not to consist of any particular code of laws called — It had a more extensive signification & meaning. The Mercantile Law as it is now to be treated of is not confined to one particular country or nation but to all commercial countries. It is more properly a common law applicable to the trade & commerce of all nations & regulating certain concerns of merchants. Usages are different in different places or countries — There are customs properly so called. The mercantile law is said to have been derived from the civil law of Rome but it is not to be considered as adopted in toto by any particular country. The foundation of the idea that the mercantile law was derived from the civil law arose from its being frequently cited in courts of justice when it applied to a question. However it was not to be proved — The authority of the civil law — The allowance of usages applied to the case of Bayley & Bedford — Lex

Mercantile law- three general principles are settled in this department - the settled doctrine of Judge Story & others is followed, that if it is necessary that the contract be entered or settled in the state where it is made & executed - except in certain cases where the well known settled principles of international law require a transaction to be governed by the laws of a foreign country.

The principal subjects of these lectures days Judge Story under the title are I Bills of Exchange & Promissory Notes 2 Insurance 3 Partnership 4 Shipping 5 Sales & Barter 6 Agency & Factorage 7 Bailments 8 Carriers by land & water 9 Interest & usury.

Having given you the most material rules of a general custom or common law applicable to certain contracts in all commercial countries, I shall now point out the difference between the mercantile law & that which is applied to

It is common in instruments Mercantile Law
no evidence of a debt as a bond &c can be
so lost and enable the person to whom it
is sold or assigned to bring an action against
the obligor in his own name. all that
the assignor can do is to grant & the assign-
ee a power of attorney to collect such bond
with a covenant that the assignee may turn
the same to his own use — and in this
covenant he implies that he will never do
any thing to impede the collection. The
parties in court are the original parties
to the instrument. Indeed it may now
be a crime or offence to sell a bond to another
person — so that if one undertakes to buy up
bonds — in the sake of getting them into his
hands previous to particular persons it is an
offence punishable. The chose in action is
to remain the property of him who sold the
instrument to the same — he has power to
discharge the obligor — a court of Equity
however will protect the assignee in this
case against the obligee — & if the obligee does
discharge the obligor the assignee may
turn his action of trover against the obligee
for fraudulently obtaining the discharge. This is
done in this state by an action on the case but

Civil Law

Civil Law

Civil Law

[illegible] [illegible] [illegible] [

on the other hand by the mer- Mercantile Law
cantile law a bill of exchange in the hands
of a bona fide indorsee, is good ag. the drawer
& the illegality of the consideration cannot
as between them be inquired into except
it be given for a usurious consideration or
for a gambling debt or where the statute de-
clares the instrument bill or note to be void
to all intents & purposes. in the consideration
of a bill of exchange cannot be inquired into
when indorsed or neither can that of a note
pass when indorsed — this then becomes a mer-
cantile instrument. as it is with a bond for a
note or hand differs not from a bond except that
the latter has a seal which always imports a
consideration y hence the want of consideration
is not pleadable to a bond — but as a seal in
this state is not kept on note of hand hence take
of all the properties of the Eng. bond when ex-
pressed to be for value received. This bond in Eng.
was placed to the bond to give a greater dignity to instru-
ment — & to promote commerce.
again. It is impossible at com. Law to raise a con-
tract against one without his consent either ex-
press or implied except where there is some ante-
cedent duty equity or justice. Now by the mer-
cantile law — it means a bill or Exchange when b

32 Mercantile Law- in favour pl. B- & the drawee refuses to accept & the Bill is protested- Now Drawer is will accept the Bill in Favour of the drawer- which he does- he may have an action of indebitatus assumpsit ag. the drawer. But if a man goes into a field of Wheat & works for another without the owners request or knowledge no action will lie ag. the owner for such labour.- for the mercantile law a verbal acceptance is sufficient to charge the drawee & will bind him as much as a written acceptance- but a promise or promise in the mercantile world not only be mutual consideration (as the one made for the drawee & the one promised to the drawer in his favour) but the former must be settled & settled the stat. of Frauds & Perjuries.

Again at com. law if you obtain judgment ag. two joint debtors & imprison one only (for the execution may be taken out ag. one- or at the election of the Sheriff-) & then one escapes the consent of the Sheriff- you cannot then take out execution & keep it when the other debtor- but it is otherwise by the mercantile law- one debtor may be taken in execution & discharged & then the other. at com. law the discharge of-

one joint debtor taken in ex- Mercantile Law
ecution grants a presumption that the
whole debt is paid — & this is the reason the
other debtor cannot be taken. But it does
not this presumption be rebutted by shew-
ing that the debt had not been paid. The an-
cient idea was that the debt in action was
a payment. It is well established law in Eng.
& has been recognized by our courts — that if the
sheriff lets a prisoner go he cannot retake him — it
would save himself from liability. The D^r — but
the creditor can take him again — But if the
creditor discharges his debtor from prison he
cannot retake him — no can the sheriff take
again at Com. law there is a survivorship of
all joint property — both real & personal. &
that if one joint owner dies the whole proper-
ty survives to the other. But it is otherwise
with joint merchants. A & B are joint mer-
chants & have joint property & dies & A have
descended to his executor & does not survive. &
The Executor is tenant in common with the
survivor. — However there is one case & that
is — the right of actions & liabilities to be sued
survives & the surviving partner does not go
to the Executor — but payment of a partnership ac-
count to the Executor will be good. — The survivor

Mercantile case - in case of a debtor & creditor dies & debt is due to the creditor the executor for the private benefit of the deceased promise.

It is not in general true (as before stated) a promise is good without consideration but in the mercantile law (at sup) ~~[illegible]~~ a promise may be good without any consideration at all.

Another remarkable characteristic of the Mercantile Law is that the vendor may stop the goods in transitu where the vendee turn out to be a bankrupt or insolvent. Thus if one in London buys goods of one in Bristol & pays for them before they arrive at the vendee's house but after they are on board the ship & the vendee becomes insolvent the vendor may stop the goods in transitu & take them back again.

Again in the mercantile law where goods are drawn over land & water & lost the carrier is liable - but if goods are lost coming from the water side - one man is not liable to another - & where goods are lost by the act of God - or the queen's enemies - there must be a contribution - or else each owner stands his own loss. The common law & part of the law of

days is made in the mercan- & mercantile days
tile law are four months - & 12 months & a half
year - but all com. law months are reckoned
lunar months & 28 days & a month & 4 weeks
& a month: - suppose a contract is to be per-
formed in a month from a date - the day
of performance must be kept & the act done
till day - & this is made a legal rule - viz
dies dominicus - & the contract cannot be per-
formed that day - - by the com. law the con-
tract may be fulfilled on monday after - but
by the Mercantile law it must be fulfilled on
Saturday before & not till monday. But Mr Huntington
in these matters is determining - & I cannot know
any single case when it ought to be performed.
Again at com. law if a case arise in what
manner notice (when necessary) is given a note
it may be done by writing a letter &c - but
in the mercantile law notice must be given in
a particular manner viz by protest. & be-
tween the Payee of a Bill & the drawer com-
mon notice is sufficient because the com. Law
rule given in a remedial
Lastly if one steals a Bank note or bill of Exchange
& obtains payment & escapes the owner is remediless
for the thief may indorse the bill over & the indorsee shall
hold it ag. the true owner - but if one steal where it is drawn

86 Bill of Exchange — Its Definition & Terms of a Bill of Ex. An open letter of request or value received to pay a certain person or order the sum of money therein described. When the Bill is payable to one or bearer there is no mistake about it & indorsed it will need no explaining.

The parties to a Bill of Exchange are 1st the Drawer — who issues the Bill — 2ly the Drawee to whom the Bill is directed — 3rdly the Payee — to whom the Bill is ordered to be paid or whose order it is drawn. There are only three parties — there may be more original parties as will be seen below. The moment the drawee accepts the Bill directed to him — his name is changed & is called the acceptor. If the Bill is indorsed the Payee then becomes an Indorser — all subsequent holders are called indorsees.

Usance is an expression of time — sometimes inserted in a bill — & denotes the time which if is the usage & custom of the countries & places between which the Bills are drawn & payment of them. The length of time is different in different countries — from 14 days to one two or three months after the date of the Bill.

Days of Grace are days given the person from whom

money is due – even before the Mercantile Last day of payment as expressed by the contract or Bill. – In England & the United States there are three days of grace.

A Promissory note – the original parties are only two – the maker & promisee – The maker is sometimes called the Drawer – but incorrectly – for this introduces confusion because the same term is applied to a different party in a Bill of Exchange. For all the law applicable to an acceptor in a Bill of Exchange is applicable to the maker of a note – but the law applicable to a maker is in no manner applicable to a drawer of a Bill of Exchange – except the physical act of drawing the instrument. A promissory note made to one or order is negotiable & like a bill of Exchange may be indorsed when the promisee puts his name upon the back of the note it begins to assume the shape of a Bill of Exchange – The promisee is the drawer the indorsee is the payee and the maker the acceptor – The note is now transferable by delivery – the indorsee need not fill up the blank indorsement – but may sell the note to another & so to another &c – & the last holder may fill up the blank to himself as payee.

38 Bills of Exchange — [redacted] There is no implied contract between drawer and the maker of two bills, if not the other's proceeds. 1st Com. Law Reports. There is no such thing as recovering where there is no privity of contract — except when matter of equity will raise an implied promise. A bill of exchange must be framed so as to find that the drawer shall be at liberty at his option, there or elsewhere when the bill is presented, to accept or pay it — the payee does not find him at home — the consideration of engagement of the drawer is broken & the bill may be protested — and the same rule holds when the bill is in the hands of the indorsee. — If the bill is payable at sight or immediately or within a reasonable time present the Bill for payment. In the other cases the payee or indorsee cannot sue the acceptor before the day of payment for acceptance, but must wait the day of payment or acceptance & payment & then sue for

notice to the parties concerned — Mercantile Law
is to be governed & not to be interpreted by whom
it is used, but by Lawyers.

It is often the case that there are 2 persons
originally concerned on a bill. A is here
in London owes B in New York & wants to re-
mit the money to B — he finds C in London
& at the request of A draws a Bill payable
in London in favor of B and on the receipt
of it, — still however more frequently is the
case there are — sometimes only 2 persons
sometimes only one party — thus A draws
a bill on B ordering him to pay C the
amount money — it may be indorsed —
C may draw a bill on B payable, as in
this bill made payable at sight
or at any day after date there has been
very great dispute in Eng. whether this in-
cludes the day of the date or not — thus sight
bills a bill is drawn payable in one month
from the date — it is said that this in clude
the day of the date — but if the bill were
payable in one month from the day of the
date — the day of the date it is said is exclu-
ded. There is really says the Judge no difference
in reason between them — the distinction 2 Bl. C.
is said to have been taken in a nice one 516

40 Bills of Exchange — Lord Mansfield said
Trin. 1760, when an Instrument did not state that
74 to give effect to the instrument — day of the date
& date may mean the same thing. — Both
Excluded there do in the mercantile law exclude
Ld Mans the day of the date. There are in Europe
281 many Judge Reeve — nations which reckon in
Jn. 829 according to the old stile & others which
reckon according to the New stile. Between
the old & new stile there are 11 days difference.
I remember many things done in one week when
the new stile was adopted in Eng. — The Bills
were drawn on the first of May in a country
where the new stile is adopted when a man
living where the new stile is not adopted pay-
able in one month — it would go to the 12th
of June before it became payable according to
the method of reckoning where the drawee lives.
The height of time where the Bill is drawn must
be the criterion & not where it is paid. I have
never seen this laid down by Judge Reeve by
Beaw. any elementary writer except Beawes.
784 When Bills drawn payable at sight or days or
are allowed. The above observations have
nothing to do with inland Bills of Exchange
but are applicable to Bills in all countries
as well as in Eng. — The word foreign means

when applied to Bills of Exchange Mercantile Law
is not confined to an immediate Currency
when we speak of foreign powers we don't mean
any of the states of the Union — But when we
speak of foreign Bills of Exchange we refer
to such a Bill drawn in one of these States
upon one in another as if drawn in a foreign na-
tion &c. Foreign Bills are usually issued and
sent in sets — 3 or 4 in a set each of which
directing the drawee to pay it the others
are void. — This day the Judge opened the
Court according to the United States in the
reign of Louis XVI. while they were at war
with the Americans against the British in
the last war Bills when French citizens in
America
in France on Paris merchants, when one Bill of
a set had been presented accepted paid the
remaining Bills of the set were void &
America paid for goods sold — & still the
Debt was discharged.

Of the forms they obtain — they are made ne-
gotiable in case of inland Bills. But 3d Jan
in this country where we have no such Statute
it seems to have been the received opinion that
a note or bond is not negotiable but made pay-
able to one or order. This question may soon have
come up in Pennsylvania where you are

42 East 2 Burrows 1 — Jacob Allen's case so
decided that promissory notes were nego-
tiable & were mentioned upon the same
foot as bills of exchange. Wherever the
intent of a promissory note may be
Ibid. collected from the note itself the Court
will not inquire into the consideration
there are a multitude of cases to this
purpose. The objection made to this note
for want of consideration was made to bills & notes
— the words or order import a consideration — & are
sufficient — the maker it is said does not promise
to him (ie) the payee — to pay another but to pay
him. But suppose a bill goods to B & delivers
it to C — C may maintain an action, for the goods
sold were mine — & so it is if money & answer
done & delivered & another & it is not sufficient
again suppose one sells land & warrants it to A his
grantee — his heirs & assigns — the grantee dies
his heir may sue the grantor upon the warranty
made. The moment the grantee assigns the
land also the right of action goes to the assignee
for he may sue on the covenant of warranty in his
own name. — Is not the assignee of a note similar
to the case put? Does not seem to me says the Judge that we
ought to consider there are two grounds for considering
a promissory note un-negotiable. There is where

Bill of Exchange - Kind' thereof - Either Partner may draw a Bill of Exchange. Whether a Partner can bind the Firm by a Bill of Exchange drawn in his own Name - Case where Bill was drawn in the Name of the Firm - Whether Partners are bound by such Bills - Question whether a Bill drawn by one Partner in the Name of the Firm can be enforced against the Firm - Case where Bill was drawn by one Partner in the Name of the Firm, & subsequently accepted by the other Partners in the Name of

Mercantile Law

and the latter are considered as the terms of
a bill of exchange and married women
[illegible] bill of exchange — [illegible]
after the [illegible] — [illegible]
[illegible] and [illegible] the [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

Bill of Exchange – will enforce the agreement.
Lord Mansfield when he decided
that the wife having a chattel interest
in the assigned bond could not sue
at law made new law. – And in subjecting
personal property to execution
the law makes no distinction
between joint & several debts
as to the remedy.

[illegible] – [illegible] – [illegible]
[illegible] – [illegible] – [illegible]
[illegible] – [illegible] – [illegible]

46 Bills of Exchange - import a contract to which
2. Bills cannot be pleaded, nor the money had
50 & there is an action or declared in the
debt common the money is imprisoned
2 + or bail must think that damages, attached
12th suit is as good as it could & as it was
21-22 in this case. The privilege of bill of exchange
is the same as that at Bench the Court
seal & time - & the defendant with us
parties. - Hence Bill of Exchange & notes
also negotiated if usury or gambling be con-
cerned in the consideration are liable to be
defeated. - No other jurisdiction will warrant
such an inquiry in the consideration.
20 There must be certain amount & interest
2 stat a good bill. - If no amount be stated or
12 & due & pay money & mean only - a bill or note
Bell & for any certain sum is not negotiable -
20. & it is void. - Secondly the credit given
ought & pay to the time. Thirdly
a bill must be signed & - absolutely the
drawee & pay out of my ordinary subsistence.
could not be paid out of that not to pay it at all.
10 & Thirdly no good bill of Exchange - the last
was - the drawee shall accept the bill & not
& terwards refuse the application to the instrument
upon which it must be brought before the court

of Com. Hend & . . . . but that Henry Hill and assignment was received on the 1st Feb. 1st & where the drawee was directed & for 2nd much more definite direction & the 2nd the Execution prior— The bill was held & Recd. therefore The drawee was directed that he is to pay out of Mr. Stewarts money &c. &c. when it shall be received. The bill was held not to be good for the same reasons. As to the other where the drawee was to pay out of a certain fund in process of time it was held not to be good. Bond, however is stated that this decision is not correct because the drawee was not obliged to pay it out of any particular fund— but only after receiving from A that source for remuneration. Suppose a bill is drawn on A to pay a sum payable in one month— & he has no funds in the drawers hands at the time & becomes A from such a time & indefinite— This was held to be a good bill.

As to notes of hand it is to be observed that they are good tho the promise agrees to pay out of a particular fund. Thus if a promise to pay 2 Esp. another 100 £ out of the money to be received from — & another pays the money if it is 2 Esp. d. indorsed over. The promise stands in the 24 situation of the drawer. A bill payable

[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

it is no matter when the time of Mercantile Law
of payment is — if the time must certainly
come — thus a note promising to pay so
much two months after the death of A. B.
father — is payable — because there is no
uncertainty — only as to the distance of time
the time must certainly come — A moral
certainty is said to be sufficient. — However
there are many moral truths
principles which are not capable of demonstration
one might have a moral certainty. A Apprehend says Mr Lee there is sufficient when
a principle of policy. Suppose a man is
not worth — pretends credit & reputation.
The certainty of his having property at a
future period approaches a moral certainty.
He gives a Bill of Exchange & recites that whereas
he owes him £ which he & directs him to pay
when he has paid off his servants. A one
makes a promissory note payable two months
after such a ship is paid off — the note is ne-
gotiable — as it is where a moral certain-
ty that the owners would be able & pay the wa
ges of the Seamen — but it is said this is of a pub-
lic nature — However this proceeds upon a prin-
ciple of policy — & if it is of such a public
nature then such bills are never to be

1 Str.
24
1 Wil.
262

52 Bill at Chatham — By a mistake made, one of the
1284 contractors has been wrongly paid the wages due to him from a cer-
tain ship. — Ordered that the Treasurer make
Pleas to [illegible] such a one to much out of the produce of the
mine in Gibraltar as appears just — It was held not
to be negotiable. — Whether the drawer were ob-
liged to the said assignee will depend upon
the Bill's being negotiable. — If neither the
one the Bill drawn upon [illegible] were
to pay it was held that the assignee should
recover of the drawer — It was objected
because of the negotiableness.
Bill at Pleas we are not debarred from proceeding
against any particular person at law —
Hil.
5 Ed. 2 Thomas case. Pleas to debt on mutuatus —
Hil. 6 Ed. 2 Brompton case — Thomas case — Thomas
Hil. 6 Ed. 2 had received a sum of money
20 corn with the wife for so much — The
Gibraltar ship had harboured [illegible] at Gibraltar
Hil. [illegible] the owner was not liable
[illegible] to answer [illegible]
1213 time the [illegible] was [illegible]
[illegible] [illegible] [illegible] ordered that the [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible]
[illegible] [illegible]
[illegible] [illegible]

as to notes of hand & other mercantile securities
are negotiated by the law merchant as bills of exchange — as the custom of the merchants
& indorsements &c are matters of fact to be proved
in evidence & therefore must be omitted to
any more particular mention — the maker may
& may not deny that there was a consideration. — all the
difference when it is not expressed is as to value
received in that there was no consideration & the
presumption the burden of proof lies upon the
promisor — but if it were expressed & no
value received the promisor would not be bound.
the principle is the same between them & in
introduced it is thought well with the intro-
ment.

as to the word order in a bill of exchange
there never to have been any decision
or opinion that a bill with these words was
not negotiable — so much is true however that
long usage would lead merchants &c. — to
keep the original intention & the nature
of a bill that they should be negotiable such
drafts as would these words are not
entitled & is declared on as special. however
they may be explained as evidence of particular
usages of particular kinds. blank notes are
negotiable inter se with regard to each other or not

Bill at Sackville — Mr Lemon [illegible] Whorehead
[illegible] they got [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] Walton.
and Acceptance — [illegible] [illegible] [illegible]
on the same Stamp as the Bill according
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
against the Drawer. — The Acceptance
will [illegible] [illegible] [illegible] [illegible]
on [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[

and the acceptor & will Mercantile law
be implied as it written — but not just & fair
so a promise on account of the beneficial. but
so also one may bind himself by acceptance &c.
by a collateral letter. — Indeed a promise is
to him and that a man will accept a bill when
drawn is a good ~~on~~ acceptance tho
the bill be not at that time drawn. So when Hare.
the drawer said if you will return the bill I will ac-
cept it was held a good acceptance. Mem 26-1800
The acceptance is usually made before or with
the time of drawing the Bill & the time of 117
it to be paid — but it may be accepted after
the time is out — not however without some
imbecility for an acceptance to pay according
to the tenor of it cannot be made after the day
is out. — an acceptance is considered as a
general promise to pay.
acceptance is usually made to the drawer —
but acceptance may be made to another, per-
son than the drawer — if the drawer does not
not accept — or is gone from home & not likely 1170
to return soon — a stranger may write the bill on.
bill — & the acceptance binds the acceptor & 56
he cannot alter it as it was to the drawer — 2 vol. 5.
& the general practice is that the drawer
has credit with the drawee & the drawee

draw it this acceptance is acc- Mercer file Exec
am advised not to accept unless drawer
will indemnify him against the bill be
indemnified - the acceptance is binding - but
if it be not attended with such acceptance, keeps
it is not binding.
5-72-4
A bill remains for Tab there is a difference be-tween
when a bill & a written acceptance. What is
this is not the case. if parties & sufficient evidence
can be had of the acceptance - Chitty on Bills 85-90
Some words amounting to an acceptance accepted
& written over - are always taken under advice as
acceptance according to the usage - the bill
The drawee may accept a bill - not accepted in
both countries - but it be usual that the must
expressly state how he intends to act. -
he will find himself liable either by his accept-
ance - he may accept in such a manner as not
to find himself so bound to the bill - or if the bill is
more than & he accepts it pay part - this Mercer
will do. - he may also accept to pay at a
future time.
451
A bill drawn at sight or a certain time - the price
has risen or some other event - that event
a bill was drawn payable on the 1st of Jan. 1833 Can. III
the drawee refused it till the 2nd of Jan - &
accepted it accordingly the holder

58 Bills of Exchange – altered after back & then re-issue
it again – the bill was held good notwithstanding. If the drawee write I accept the Bill
2 Str. if such a one will pay it. It is evident it so from the ad-
1195 mind of that man, payment – it amounts to
a request of the drawee & so are the rules
& if the holder does not call on that man he
must return it to him.
Bull & P. The drawee may accept a bill & have one half-
271 mine & the other half some collateral thing
& be bound by such an acceptance. An ac-
ceptance may also be conditional – as upon
2 Str. the happening of such & such event – when
1182 a ship shall return or if a ship return &
2 Bls. turn or when goods are sold &c – as soon as
9 the condition is performed or the event hap-
1 Str. pens it becomes an acceptance absolute. ob
648 d what amounts a conditional acceptance & what
Ld R. an absolute acceptance is matter of law
152 to be determined by the court & not by the jury.
I find it to be a rigid rule of law says the Judge
that when a drawee wants to accept a bill upon
certain conditions – the conditions must be in
writing with the acceptance. The Com. Law rule
Bing. are explicit – & provide that no parole proof
286-29 can be introduced to operate against a written
Wils. absolute acceptance – or to make the conditions

different from what it appears Mercantile Law
to be on the face of it. — The acceptor can take no
advantage of any verbal conditions annex-
ed to the acceptance.
as to what shall be an acceptance — It has been
held that where the drawee said leave the Bill
with me, & I will accept it — that was a good acceptance.
I suppose says the Judge the drawee only meant Bawr.
to look over his accounts before he determined 454
but where the drawee says I will leave the Bill Gibbs
with me I will look over my accounts & it was held to be 415
no acceptance. — as to what words will amount 3 Bac.
to an acceptance — almost any words 610
that are sufficient. However says the Judge
if the drawee should write the word Haystack upon 1 T. R.
a bill I don't whether this would be considered 269
an acceptance. I know of a case where the 3 Burr.
drawee wrote on the bill a word as foreign as 1678
that — & it was strongly contested — but the case Ld K.B.
was taken out of court. — This was in Massa- 270
chusetts. — If the drawee writes to another 1 T. R.
for leave to see the contents & it is an acceptance. 260
A in Ireland desires to draw a bill in favour 6 Burr.
of B on C in Holland — & writes to C to know if he 1676
would accept a bill so drawn — promising to give 1663
him credit on a house in London. C writes back
to know what house — & in return name the house of D

Bill of Exchange – Durrie. book that is owing
drawn on him &c. – the Bill was Drawn ac-
cepted & the money paid. & then writes to
Dan Lord to enquire if him & accepted the bill &
on the receipt of ~~the~~ it – Durrie that he will
by the first time & tells Lord that the bill was
drawn – & then writes & tells Lord to pay it
on him on the credit. – but Lord noticed by
drew the Bill which Durrie upon – & ~~drew~~
his action on that he thinks & to know said
that Durrie bound by his acceptance – the need
to see the Bill drawn. Lawes contended
that the letter of acceptance by Durrie was
sufficient – but the court said a written ac-
ceptance would prove & in modern practice
the presumption is in consideration of the Stamp
Act requires.

3 Wm & M c 16 s 1 Bill of Exchange Act 1882 & Bill or note & made payable to Bearer – Effect as negotiable until & when paid by due-
ment. Effect of Indorsement. – & Bill
Bm 452 & notes payable to J.S. or order something must
be done or written on the Bill or note & show
that J.S. did order the payment & another
the usual manner is by indorsing (ie) writing
his the payee's name on the back – It need not
however be written on the back – It may be indor-
neatly

of Indorsements there are two Mercantile Law
kinds — viz Full indorsement & Blank indorsement
The full indorsement is where the indorser
writes on the back in full thus Please to pay the
contents to B & charge the same to — & which the indor-
ser subscribes his name. — In the Blank in-
dorsement the indorser only puts his name
on the back without any other writing —
which act of putting his name thus — contains
an implied contract that any subsequent
holder may fill up the blank — making the Dorp.
contents payable to himself — Blank indorse- £17-11
ments are most frequent — & indeed almost the £55-0
universal kind in Banking. The indorse-
ment in blank the bill or note pass by deliv-
ery — not that it must pass by delivery but
that it may. — when the blank indorsement is
filled up it becomes an indorsement at the same
time — The bill or note will not now pass by de-
livery — There must be another indorsement
& each indorsement in full ought to contain word
of negotiability — as to such a one or order or or bearer &c.
But the indorser indorses it in blank it passes till Next
again by delivery. In a transfer by delivery it
is said that the person making it ceases to be a method
party & or security for the payment. Thus if exin- £41
dorser in blank A is — B, C, D, E — & A pays it to B — B & C — D & E — to A. A. B. C. D. E

Bill of Exchange - Can not be sued upon if Lessee to his name is not on the bill - Nor can D for the same reason. - So it is by the Mercantile Law but it seems there can be little doubt but they are liable in another sort of action - an action at Com. Law - as for money had & received - But at Com. Law the holder can sue no other but his immediate indorsee. - There was an implied warranty that the Bill should be paid by the Drawee: but this warranty in case of a mere delivery extended only to his indorsee. But where one indorses a bill in blank (ie) by merely setting his name on the back - the indorsee presents it, for acceptance the drawee takes it & puts it in his pocket. The indorsee may bring trover for the bill - but before he can have no proof that the drawee converted it. - Let the indorser bring the action: let the action be brought in the name of the indorser - & then let the indorsee come in as a witness - has he such an interest as will exclude him from testifying. - Mere probability that he has interest will not exclude him - He can not be rejected because any one believes or presumes he has an interest in it. - May be he acted as an Agent or Attorney & there in such case is competent & admitted. Nothing is more usual than for the holder of a Bill or Note to indorse it in blank

& send it to some friend for the Mercantile Law
purpose of procuring the acceptance or pay-
ment. In this case it is in the power of the
friend either to fill up the blank space over the 180
indorser's name with an order to pay the contents Ld Raym.
to himself or to give a receipt for it & collect it as 575
agent of the indorser — Indeed one indorsee has 1 H. Bl.
his election to take it as indorsee or as agent. 88
A man may indorse a blank note & be liable Bayley
as an indorser for any sum with which it Bunnell &
may be afterwards filled up. Lamaire
It has been asserted that in case of a transfer Ld Raym
by delivery the holder can sue none but one 737.
whose name is on the bill — or his own immediate 8 T. R.
indorser. The blank indorsee may sue on the 65
ing a power of attorney — or transferee. — Salk. 125-8 1 Show.
The nature of an indorsement is such that when 163
a bill is once rendered negotiable by the indorse-
ment of the payee — subsequent indorsers can neve- 2 Show
er limit or restrain its negotiability so as to pre 1206
vent a future transfer by indorsement. and 1226
hence the word order in an indorsement is not
necessary. Whether this word is or is not neces-
sary is a question which has made some fi-
gure in the English & Italian courts. but the
question is now settled. A gave his note to B or order
B obtained it & without using the word order — & indorsed

Pitt pl Exchange – v B D – 2d ind. – For the Def.
M.T. it was urged that the words order were not in
55. the indorsement B v – therefore the court did
2 Bur. not mind in this case that this word was used
1211 above. – In the case in Burrows the question
there arose upon a demurrer – The declaration
stating that the indorsement was to J.S. or order
Lemon pay'd was read at the note & when produced
it was without the words or order – and the
def.t demurred for a variance – but the Court
held it was no variance – for this was the legal
operation of the indorsement. No breach of
the case and Judge Reeve shows what the law
is more than good pleading. – In another case
of trover a bill in favour of B or b – b accepts
B indorses it to D omitting the word or order
D indorses it to E – & was the question. It
was taken by the Court that the insertion
of these words was not necessary. When
the payee indorses the indorsement may be
restricted – but the restriction must be
asserted expressly – as if he directs the drawee
Doug. that please to pay J.S. w my use – or – the within must
639 be credited to D value in account. In the last case
the clerk of the acceptors forged an indorsement
& made the bill payable to himself & then in-
dorsed it over to the Bank of England. The acceptor

became insolvent — the Bill Mercantile Law was made against the Interest of the Drawer & Acceptor — The Drawer may keep cash in the hands of the Acceptor without being against the Bank and yet the Bank could not take the Bill in payment & even restricted by the Law — that the Acceptor could not make the profit of Interest & was restricted by the Law. The Bill was made void & the Drawer & Acceptor discharged — on a motion made by the Counsel of the Plaintiff & the rule to show Cause made absolute for a new trial granted — Bill of Exceptions & Error.

An Infant is never liable upon any Indorsement. — What shall be said to be an Indorsement about to affect his rights as against the Drawer or a previous Indorser. Every man has presumption always to begin with in the case of Indorsements there is none such & therefore an Indorsement being void — when the transfer by delivery only bona fide holder can recover upon it tho it may have been stolen by the Indorser. Thus a Bank Bill payable to bearer was sent by mail & in its passage was stolen & Plaintiff came into the hands of a Stranger for Value — the true owner sent word to the Bank & stopped the payment of it. — & when presented to the Stranger

66 Bills of Exchange - it was accordingly rejected &c-
Doug. Upon this the Tavern keeper brought his ac-
Peacock tion & proved & recovered.

Rhode 2d there are two Payees - they are in Part-
683-6 nership - & if one of them indorses the Bill
it is a good indorsement - It was objected
that this was not within the scope of Part-
nership concerns. (Vid alter curiæ.)
Or where a bill is drawn in favour of two
persons not in partnership - in this case
both must indorse & subscribe their names
The indorsement of one however will bind
Doug. him. There is indeed one case where the
683 court held that the indorsement of one should
Carrick be binding upon both, because the drawing of
Hitchcock the bill held out & to the world that they were in
partnership. This case however was much gram
bled at. The case was A & B drew a bill payable
to them or order - then one of them transferred
it in his own name & received the
action it is said has however been recogni-
zed in the Circuit Court of the United States.
A feme sole indorses a Bill & marries, the hus-
Str band will be liable as indorser - but a feme
516 covert cannot indorse a bill. If the executor
2 Kau of a holder of a bill indorses the Bill he is li-
1225 able personally for the indorsement. 1 Ves. 45.

The question is whether by the Mercantile Law
mercantile law it is necessary where the le
gal & the equitable interest is separate — that
the suit be brought & maintained by the trustee.
The law in this respect says the Judge is the
same as the Com. Law. — It has been decided that
the cestui que use of a bond may maintain an
action in his own name — Thus where a man
on a sick bed being about settling his estate ordered
trees to be cut down & sold for the purpose of rai-
sing so much as a portion for his daughter
The son — who was then standing by said dont order
those trees to be cut down — it will ruin the farm — let them
stand & I will enter into a bond with you to pay my sister
the sum required to be raised — which was done ac-
cordingly. — The man died — who shall sue upon
the bond the executor refuses — The court said the
suit was well brought in the sister name.
This question came up also before the Circuit
Court of the United States in Vermont. A man
conveyed land to his brother — & he conveyed by him
& his only daughter at 21 years of age. — The Grant-
or died — his brother refused to convey the land
to the daughter of the Grantor. The action was
brought by this daughter while Judge Chase was
on this Circuit. The case was argued — Judge Chase
doubted whether the action would lie — and ordered

68 Bill of Exchange – the case to be continued till the next term. – The next Term. Judge Ellsworth was on the bench – he was clear of opinion that the action would lie.

Serth. A Bill can never be filled up – (ie) part be indorsed done & part done otherwise

As to the engagement of the drawer, in a Bill of Exchange when indorsed – they all go upon the ground that the holder drawer duty – this is the condition always implied in an indorsement & an acceptance. The Drawers engagement is to the payee & every indorsement holder. – His engagement is made particularly with reference to the drawee – – He engages that the drawee shall accept the Bill when duly presented – He likewise engages that the drawee will accept the Bill according to the tenor of it – & to pay it at the day of payment. – He engages the Drawee responsibility – for the sum to be indorsed & inserted as to be made to pay the accepted. He likewise engages that the drawee is to be found at the place described in the Bill. – If any of these engagements fail the drawer is liable unprecedented & Before an action. And no defence can be made to the action in case of no failure – the the drawee

keep it at the day appointed — Mercantile Law
The circumstance of pay^ment^ must go in mit-
igation of damages & not in bar of the action.
If a drawer delivers over a Blank Bill con- Hamb.
taining in the payee to fill it up — the drawer 5/215
will be liable to any amount with which the
Payee shall fill it up. — It is the duty of the
payee in case the bill is not accepted or not
paid to give notice to all the parties on whom
he intends to rely for payment. — The object
of his giving notice to the drawer is that
the drawer may have an opportunity to take
his effects out of the hands of the drawee in ca-
se. In what manner the notice is to be given
will be seen by & by. — This notice is made ne-
cessary to prevent any loss that may happen
to the failure of the drawee — If there is no
failure of the drawee then there is no loss by
the drawer. If the drawee refuses to accept
the bill is returned to the drawer with certain
other formalities — this is giving notice. In case
of non acceptance & non payment the period
when the debt of the drawer is to be considered
as contracted — is the moment the drawer draws the
bill — so also the debt of the indorsers commen-
ces at the time of the indorsement. The debt in
such case does not commence a new but revives the old

Bills of Exchange - when a Bill is indorsed to the
Salk Payee - as between the indorser & indorsee
133 it is a new bill - so it is as between every
2 Show. subsequent indorser & indorsee. Nothing can
241 discharge the drawer or indorser but the pay-
204 ment of the money — not even a judgment ag.
a prior indorser — A judgment against the
drawer or any prior indorser is no bar to
an action against a subsequent indorser by
the indorsee. The principle of the common
law is that a man has a right to demand
against several as if they being a joint & several
bonds - the obligee may sue A & if a bad debt pay
he may sue B upon the same bond. But a satis-
faction obtained of one is a bar to another action
this is the case with joint & several contracts —
But in actions sounding in tort it is otherwise
thus in Assault & Battery a judgment is a bar
8 Mod. whether the judgment is satisfied or not. — The
86 reason of the distinction is this in contracts
2 Show. the sum due is certain — but in Assault &
241 Battery the damages are uncertain. — Nil
interferes — The Plff may say in Assault & Battery
I have sued one who beat me but the damages assessed are too
small I will sue another of them & may be I shall get larger dam-
ages if not so large I can take out execution upon the former judg-
ment. — But the Policy of the law prevents this.

It is a rule of Law that where Mercantile Laws
a man has two remedies & elects one he
shall not afterwards resort to the other. But
in the Mercantile law it is not so. In Eng.
one may bring debt for rent reserved — or he
may distrain — but he cannot do both. Tho'
a man's body get into another — but to mischief
the latter may bring trespass — or may imprison
the body — But he shant destroy their beasts
& their liberty — & bring an action against them
mutuo modo. — Suppose one commits a mis-
on his house & takes away his hat — trespass will lie
or trover will lie — but not both — because the
evidence in both actions is the same. This
is the test when one action will bar another
If a man actually takes out execution against
one — & upon this execution takes his body & puts
him in Gaol — he cannot proceed further for his
property — For law considers a man's body
in gaol as good as the cash — And if he be a
joint debtor & let him go out of Gaol again — he
cannot take him again — nor proceed against
the other joint debtor — so it is by the Com. Law. — But 2 Bl.
by the Mercantile law if he let one joint debtor 1205
go from Gaol — he may after that proceed against
another joint debtor.

The engagement of the drawer or indorser (vide ante)

Bill of Exchange - is additional. The holder is under to make the drawer liable must in case of non acceptance by the drawee give notice to the Drawer & indorser - either too in the term which the law requires. Where the payment is limited at a certain time after sight it is evident that the holder must present it for acceptance or the time of payment will never come. If the drawee refuses to accept - it is necessary to present it afterward for payment - he must present it when the day of payment comes.

A great question has arisen in Eng. - A draws a bill upon B in favour of C - C presents the bill for acceptance - & B accepts. Sometime before the day of payment B gave notice of the non acceptance & brought it within to the drawer. The time of payment came - the bill was presented for payment - & the drawee said it - but now he did not - after it was given the drawer - B goes on with the suit - the old never knew that the bill was accepted or paid. ~~It was~~ a voluntary payment was made by the drawer ~~the drawee~~. Afterward the drawer brought his action for the money so paid. - The not giving notice was contrary to the rules of the mercantile law. The law will not help fools & buzzards - How much ought C to recover of B. C was liable for something

State Case in a Mercantile Action.

because the drawee did not accept Mercantile Law
agreeable &c. the implied engagement of the drawer
but the question how much. — Heled says
Judge Rec. if judgment had been rendered in
the action by the holder ag. the drawer — there
could be no objection in my mind at all — but
that the drawer could recover in this action. It
would not be overhauling the former judgment
It has been determined that if an insurer be sued
on a policy of insurance & a recovery be had —
yet if there afterward appear any circumstan-
ces to render the payment of the money unequi-
table — unjust & unconscientious to retain it
or to impeaching the former judgment it may be re-
covered without any hazard at all. A strong con- 2 Bac.
struction was put upon the case of Hayes & Harlan 1005
when Burrows reports were brought into this coun-
try. — a Kingsbury man would sue a Windsor man
before a justice of the peace in Kingsbury & recov-
er — then the Windsor man would sue the Kings-
ry before a justice in Windsor & reverse the former
judgment

Bills payable at a certain time after sight must (Vide ante)
be presented for acceptance or the time will
never come. But when must it be presented for
acceptance. No precise rule upon this subject can
be laid down only this — that it must be done

74 Bills of Exchange - as soon as it can be done conveniently. - Thus if a bill of Exchange drawn on a merchant in London come in the afternoon - the holder ought to give notice the next day & present it for acceptance. If the 5 Geo. day is fixed for the payment - at the holders 26 C. 1 option to present it for acceptance before the day of payment - & acceptance 16 C. 11. is refused - he is bound to give notice - the non- 713 acceptance. But if a man sends a bill & a factor to get it accepted notice is necessary as between the Factor & Payee. - The holder of a Bill is bound upon non acceptance to give notice to every preceding party to whom he could resort for indemnification. Here the enquiry is what shall the holder give notice to the drawer or indorser, if he intends to look to the indorser - for in this case notice must be given to the drawer. The answer is that the drawer must have notice that he may in case of non acceptance take the opportunity to take his effects out of the 5 Ann. drawees hands. But why must you give notice 26 C. to the indorser. he is not presumed to have effects in the hands of the drawee. The reason is that it

that the indorser has by Mercantile Law
to give notice to his indorser or drawer, pre ce-
ding parts. In the case in Burrow 2670 where a Bill
bill was drawn payable at a certain number of 2670
days after date - & the holder having presented the
bill for acceptance which was refused - neglected 1 T.R.
to give notice — the court said that the holder ought 713
to suffer for neglecting to give notice of the non ac- 712
ceptance - tho it was not necessary to present the
Bill — for acceptance. The mistake of the law shall
not avail him. - It will never do to plead ignoran-
ce the law to avoid executed contracts. — This brings
to my mind very the Judge case which occurred
in the state. By one stat. all persons convicted of
Burglary are to be sentenced to Newgate. - Newgate
being out of repair at a certain time the old law
was revived which made the punishment hang-
ing for the third offence hanging. About this
time a certain old fellow was indicted for Bur-
glary & when a verdict of the jury against him
he desired to be heard in his own defence by way of
mitigation of punishment. - The Court gave con-
sent — he came forward & said it was true he did com
mit Burglary - But says he I did not know that the law was al-
tered as to the mode of punishment - & thought they were to be
shut up in Newgate for that offence.
If the acceptance varies from an acceptance according

Bills of Exchange - the tenor of the Bill - notice must be given - the same as for non acceptance.

Lil Ray. 278 The Demand which the holder must make for the Payment - the mercantile law varies from the Com. law as to the term of it. The demand must be made at a convenient time - a reasonable day for convenient for payment by the Law.

Beaw. 161 The demand must be on the last Day of payment in such manner & at such time that a protest may be made that very day.

whether Days of Grace are allowed in the payment of notes or not is a matter of much speculation. It is said that days of grace are a creature of the mercantile law. & that notes of hand are not creatures of the law - This reasoning way the judge is very fallacious - The fact is that the Mercantile law puts negotiable notes upon the same footing as Bills of Exchange. - & it is the practice to allow days of grace on promissory notes, as well as on Bills of Exchange.

Doug. 629 Hardr. 494 Hargrave Notes 65 1772. C. 98-128 most universally. The law is now pretty clearly settled. In the case of Lloyd & Smith (see Doug. 629) Lord Mansfield ruled at Nisi Prius & Lord Mansfield that days of Grace were allowed on Promissory notes. This case was afterwards argued & this admitted - for the point was not made. - but the question was afterwards fully settled. See 1 Term Rep. 167 - 4 T.R. 148

In all places there are certain Mercantile Laws
hours of business. – within such hours the Bill
must be presented for payment. then the drawee
is to be found at his place – his store & every where
else.

In giving that Notice which the law requires
upon non-payment – it is necessary, for the hol-
der to be particular & state in his notification that
he dont mean to give any credit to the other parties – The
notice must contain this declaration – If not
then it is not such notice as the law requires
This notice must come from the indorsee or hol-
der — & that the notice be sent off by the next post
when the Parties do not live in the same place. but
when the parties live in the same place it is other-
wise – notice must be given in a reasonable
time. – But what is this reasonable time – This
is a question of Law to be tried by the Court – & not
by the jury. originally it was to be tried by the jury.
No certain rule can be laid down to ascertain
what is & what is not a reasonable time. I have
never seen a case say Judge Reeve where notice
to the drawer or indorser of the dishonour of the
Bill or note within twenty four hours after 1 T.R.
such dishonour was held insufficient. In 169
the case of Tindal & Brown 1 T.R. 169 the drawer
& payee upon every note & Bill order – Bill indorsed

Bill of Exchange – 1786 – on the day it fell due
it was the last day of grace at 10 o'clock the
indorsee left word at the maker that the
note was due – the maker was not at home
the indorsee called the next day & the maker
said he would call that day & take it up. – He
did not call – & on the day after the Bill was
tendered to the indorser who refused to pay
saying he ought to have had notice before the
parties living no more than 2 minutes
walk from each other. She could hold that
the indorsee should have given notice to the
indorser of the dishonour sooner. But they
in this case say Judge Reeve sought to notice
to you. The ~~drawee~~ indorsee insisted that
notice on the second day was in season. This
may be – but as the case was the notice was not
from the indorsee himself – the notice should
come from himself & not from any other
person. No notice need be given to the drawer
of a Bill of the dishonour – provided the
drawee has no effects of his – in his hands. – The diffi-
1 T.R. culty is that notice is required to give the
405-410 the drawer an opportunity to get in effects
to pay the drawees bonds. But notice must
be given to the indorsee whether the drawer has
effects in the hands of the drawee or not

But this question has been as- Mercantile Law
sisted in the Exp. Courts — Anything the drawee
has any effects in the hands of the drawee
but as the case may be he may be damaged
by non acceptance & notice of this fact.
Shaw v. Broadhill in favour of B when B for
the use of D — Does the nominal holder of D
the beneficial trust. — B presents the bill & C
for acceptance which is refused — B now sues 2 T.R.
the drawee. — & the defendant had no effects 703-704
in the hands of C the drawee — nor had he legal
notice of non acceptance. But it had effects in
the hands of the drawee. & supposing
the bill had been laid by C presuming that D.
had effects in the hands of C — settled his account
with D without notice of non acceptance (when 1 T.R.
D became a Bankrupt. — & said he was undam- 287
aged for the want of notice. — The court evaded
the question whether he could recover on account
the damage — the case went off upon another
ground — so that this question has never been
decided.

As to inland Bills notice of non acceptance is
necessary but no certain term of notice is re-
quired. But when acceptance is refused to
a foreign bill — the holder must then go to a
Notary Public & give him to understand their fact.

80 Bills of Exchange - but the question is usual & where
is no notary public there? Then application
is to be had to any substantial person in that place at
the business to be done in the presence of two or more wit-
nesses - & it is the business of a notary public
when such application is made to him to
Liability of go to the drawee personally & demand accept-
ance - if refused he then notes the refusal
the time presented & his own charges & enters it in
book of the bill. - He then draws up a writ
the substance of which is that the bill was
been presented for acceptance & refused at
such a time - & that the holder intends to re-
cover all damages & sustained out of the
other parties. The demand of the notary is in
self is material & cannot therefore be done by
his clerk. This Protest is conclusive evidence
U.S.A. in all foreign courts. It must be sent away
To by the next post to the person or persons to be charg-
ged therewith (ie) to the drawee & to all the in-
dorsers & whom he would both severally sue.
It must be expressed that the holder means
to make the person & whom the notice is
sent liable for all damages sustained. It is
required that the letter containing the notice
Letter to be put into the next mail or that next post
&c after it is demanded - Provided you find the mail

it may not reach the drawer — Marshall Law
or the indorser — How then can they have recourse K. L.
but that the holder intends to look to them? 713
The holder has done his duty — if the bill is lost
he must prove the contents unless other proof
can be had.

When a bill is accepted it must be presented Beawes
for payment. But if the drawee cannot be 260-1
found at the day of payment the same things
are to be gone thro as if he had refused it — ex-
pressly — to get an acceptance not according to the
tenor of the Bill. — The drawee may accept on-
ly to half — or having accepted for the whole
pay only half — yet it must be protested the same
as if acceptance & payment were both refused.
If the holder bind the drawee in failing circum- 2d Raym
stances after acceptance it is said he may sue 745
for better security — but this cannot be done. If
the Bill is protested the holder may recover of
the drawer the principal — damages costs in-
terest &c — The cost is that only which is charged
in the bill by the Notaries. — But what will be the
damages. You cannot make the actual loss &c.
the rule of damage — remote damage is not 840
considered. A ship may in consequence of de- Beawes
lay be shut up in the mouth of Connecticut 261
river by the ice — this is not such damage in the case

Bills of Exchange. Inland Bills of Exchange are
when the drawing of other com. law transac-
tion. — No recovery need be had for damages
nor is there any need of a protest in case of
non payment or non acceptance. They are
indeed governed by the principles of the com-
Bevan- law except where regulated by certain stat.
256 & they are drawn & paid as drawn.
As to the United States it is now called that
each State is to another a foreign State.
Action the drawee will not accept on the
account of one but for the honour of the draw-
er — this gives him a right of action against
the drawer — the drawer may accept for
the honour of an indorser but the bill must
first be protested for non acceptance upon pay-
This gives him a right of action against the
drawer. Third persons may accept a bill
Beawes for the honour of the drawer — or for the hon-
457 our of an indorser — & in such case he is
bound to all subsequent indorsees. — Once
after such acceptance for the honour of the
drawer the drawee wants to accept the bill
458-9 the holder may permit him to do it — but this
does not discharge the third person — If one ac-
cepts for the honour of the drawer it gives him
a right of action against the drawer only.

But if one accepts for the honour Mercantile Law
of an indorser. The acceptor is bound by his
acceptance to any holder of the bill. If the drawee does not pay the bill the drawer has a right
of action against him but if the drawee refuses Ringard
payment & the holder resorts to the drawer & com- v Dunkin
pels him to pay — the drawer may then have an Doug. 20
action ag. the acceptor not only for the principal Blackp.
sum but for damages interest & cost. The ac- Peele
ceptor is bound by his acceptance to any holder Doug. 20
of the bill at all events — & the failure of the Hem. 31.
drawee either after or before the acceptance 88
will not discharge the acceptor. By the com.
law if one breaks his promise he must pay nom-
inal damages at least — The no action can may 1 Wils.
have been sustained. If the drawee has effects of 185
the drawers in his hands & having accepted the
bill refuses payment the drawer has a right of
action ag. the drawee at least for nominal dam-
ages. The holder of a bill may discharge the
acceptor by express or by express declaration
in a letter — or by noting acceptance annulled in his
book. — This is a privilege due to the mercantile
law. I have said may judge because that is con- Ld K.
ditional acceptance is binding when the drawer 7 C.
pays it if the holder does anything by which he dies — Marius
injures his right — but if the holder abuses a pri- Burrow
vilege

Bill of Exchange - dispute between - The jury upon circumstance shows that he does not acquiesce in the conditional acceptance he cannot afterward come upon the drawee. It has been said that if the holder has received a part of the money from the acceptor it discharges the indorser as well as the drawer because he has given credit to the acceptor. but it is to be observed that if proper notice of non payment is given such drawer or indorser are not discharged by part payment by the acceptor. On the other hand a receipt of part of the money from the drawer does not discharge the acceptor only pro tanto - & if the drawer has paid the whole it discharges the acceptor. If the holder has received part of the Bill from an indorser & afterwards commences an action against the drawer without giving notice of the non payment - he may recover the whole bill of the drawer & then he will be a trustee to the indorser for what he has received of the indorser. as made thus A to B or order B indorses it to C - C sues & D gives Bond for it - C recovers & D to prevent further costs pays the sum to C - D may sue B the acceptor in the name of C - & would have recovered as I think - that the court were unanimously

of opinion that by the Mercantile Law
Law of the promisor was discharged by the promi- 1 Wils
sor himself & that the indorser was therefore 46
absolutely discharged. It was formerly a ques-
tion whether the holder of a bill must not re-
cover of the drawer before he can have an action
against the indorser but it is now settled that
it is not necessary to state or show that any
demand has been made of the drawer — Neither
is it necessary for the holder to give notice dam
of the preceding indorsers except the one of whom 1 Salk
he brings his action — In every indorsement is 131
the nature of a new draught drawn every subse- 2 Ld. R.
quent holder of a bill & the requiring of a proper 1441
& non acceptance is not become a proper 2 Stra.
ground of action but in one more than 649
giving notice to the drawer that he may get 1 Salk.
effects out of the hands of the drawer. 128-9
of the Nature of the Contract — Between the
is an immediate privity of contract between 1 Ld
the parties — as the payee & the maker of the 1 Ld.
note an indorser & his immediate indorsee 685
the com. law furnishes a remedy proportioned
in consideration — of special action on the 1 Ld.
case also lies — Lord Ch on the custom of Lon- 1 Salk
don — which last is the foundation also 125
bills of Exchange & in negotiable promissory notes 1 Ld. 680

86 Bills of Exchange - The Law Merchant are parts of the Law of England & proved here - are indeed a distinct species & perhaps sui generis. Their principle & contract exists between the drawer & payee of a bill — but whether between the payee & acceptor seems not to be settled.

The mode of declaring on them comprehends both the custom & agreement — would not indeed prevent them from being considered as part of the Law of England, if they were considered as founded on the custom & not when General Law. — Where it was 1 Show. 160-870 pleaded that the right of the Bill arose within the custom. — But the Law of Merchants is now recognized as part of the Law of the Land 8 Mod. it is only said that according to the custom of Merchants A made his certain Bill &c - and it is not 2 Ld. Raym necessary ever to state any thing as done within 1542 custom of Merchants. But the Jury must find that the drawer made the Bill in the manner declared & the acceptor drew — and it is how been adjudged — that generally stating a direction with which the Bill is drawn 1 Str. 182. seems. or in a declaration upon a note it must 82-3 be stated that the maker made his note payable 2 Str. Bill is made payable to a fictitious person or order 515 the declaration must be according to the legal

operation (i.) that the Bill was Mercantile Law
Drawn payable to bearer & not to order
The reason of this is that a Bill made payable to
bearer ~~order~~ must always be indorsed by the
bearer — but as the declaration bearer cannot in-
force the Bill — it is as it payable to bearer &
it must be declared when. first it the Pl. shows
& that all the circumstances truly & affirm
that there is no such person as is named Payee
of the Bill & declare that some other person
as the acceptor or drawer wrote the name & indorse
upon the Bill by way of indorsement had.
Then if a verdict is found affirming the fact
and in the declaration the Pl. may have judg-
ment. — when the Ct. declare a note payable
to bearer they usually refer to the stat. 3 & 4 Ann
which allowed them to be received as the same
as bills of Exchange had formerly been. But it
is not absolutely necessary to refer to this stat.
a Bill payable to the order of a man may be in an
action declared when as payable to
bearer or that the legal operation of the word.
Where a note is made joint & several the holder
may bring his action against one of the makers
of the note and he may make the note alone and a
it is not necessary he may bring his action against
one of them & that they jointly & severally

the party to whom it was drawn to the Plaintiff & Lord
that it was drawn to the Plaintiff & Lord
the same and it was in fact drawn
to the Plaintiff — But in the subscription
it is alledged it must be stated that it was
drawn & subscribed by authority of the mas-
ter. — It must be stated that the drawer of
the Bill delivered it to the payee. If a Bill was
payable after sight it must in an action a-
gainst the acceptor be stated that it was pre-
sented for acceptance & that it was accept-
ed — or if the drawee could not be found —
must be stated according to the fact of the
case — If the action is when the Bill was made
after date it is not necessary that it should be
presented — if it were not till it was become
a payment it may be so stated. In the ac-
tion against the acceptor the Plt must
state that the Bill was accepted and that
at the time of it's becoming due. This
appears not that it is necessary to state
but that there may be less pleading. The
Plt may state that the acceptor promised
that there may never been
indorsements not filled up need not be stated
to have been made upon any body. In
the action against the indorser the in-

50 bill of Exchange - drawn upon the Drawer, must be stated. The Bill is dated the 10th of Jan. 1788 - payable 2 months after date - to the order of the Drawer - and indorsed by him - The Bill is duly accepted but the Date of the Acceptance does not appear - But there is evidence in which it is stated that the Acceptor made an entry in his Book of the Bill - because they can indorse more than the Bill drawn - because they can indorse only the Bill drawn - because they can indorse only the Bill drawn - because they can indorse only

in a plain end — yet the indor. Mercantile Law
see may have a remedy against his in-
dorser by a com. law action.
If a Bill in the course of circulation comes
into the hand of an indorser he cannot
maintain an action as indorsee vs. his last
indorser — because on the count avid every
indorser is liable to pay the Bill to the in- 4 Dk.
dorsee — but according to the facts appearing 470
upon the record the Plff by his statement hath
entitled himself title — for he is holden to pay the
Bill to the defendant rather than the Plff to
him. If after refusal of payment — a bill is Hyd.
indorsed to the drawer or indorser he can- 125
not maintain an action as indorsee vs- Dunl.
the acceptor. after going thro all the Term 209
& there how the Plff came by the Bill & a 1 Bay
right to recover of the Defd — it is customary 528
to make a promise made by the Defd to pay 1 Salk
but it not necessary to state there was a promi- 12
ise. I should think may Judge Reeve it would
be sufficient on principle & even better only
to state that the Defd became liable to pay
& then the law implies a promise. The rea-
son why I think it may be better not to state
a promise is that if an express promise is
stated it does not appear whether the Bill

Bills of Exchange - relies on the mere liability of the deft or upon any actual promise by him
Lord. I know it has been said that non assumpsit
128.9 would not form an issue if a promise were not laid - But I conceive that non assumpsit may be considered as denying the liability stated. Many instruments given on good consideration are not negotiable - for they cannot be assigned nor declared upon as such - if a Bill or note is not negotiable the
3 T.R. Payee may bring an action at Plaintiff ag.
174 the Drawer or maker & use the Bill or note merely in evidence of the debt. A Bill or note given to a payee is presumptive evidence that the drawer owed him but it is not conclusive evidence of it. I hardly know any Judge Reeve what would be done under our law if a note were given as an accommodation note. (ii) If the maker of the note merely lent his name to the Payee - for as our notes preclude the deft from showing a want of consideration the payee must recover. Should a case arise I expect some law would be made upon the subject. I should have no hesitation say Judge Reeve in permitting the deft to show the truth. If a negotiable instrument is transferred without

indorsement. The parties to a mercantile law
suit is not liable to any action from
any holder of it. The mercantile law.
But a condition the holder of the Bill if
he cannot recover the Bill may bring
an action of assumpsit against
the person from whom he had the
Bill without indorsement. This action
can be maintained only between the
immediate transferor & transferee & not
by any one where there has been an inter-
mediate holder. This is an action merely
to recover the consideration which was
paid for the Bill whether that were good
before or money. But the defendant may show
that the holder of the Bill did not use due
diligence to obtain the money of the parties
appearing upon the Bill & used reasonable
proper means to recover. The holder of a Bill
may proceed against the drawer & indor-
ser all at once & may proceed to judgment
but if any one of them pay the debt he can
take out execution only for the costs & if he
should take out execution otherwise he will
be guilty of contempt of court & treated ac-
cordingly. Can a man indorse a Bill and
on receipt recover judgment against him

2 Vol.
2 Vol.
115
5 Show.
515

Bill of Exchange - took him in Execution & imprisoned him. He was discharged by the Lords act - (an act for the Liberation of Debtors) The indorsee then sued the drawer & recovered on the Bill. The drawer then pleaded the acceptor & it was contended that the acceptor having been taken in execution at the suit of the indorsee had barred it. But the Court held that tho it were a satisfaction of the debt as it respects the indorsee it was no discharge of the action brought by the drawer.

Non Assumpsit is the general issue. All the to actions. It is now settled that the holder of a bill after having several of the parties bound to him, one of them becomes a Bankrupt & the holder comes in under the commission & obtains a share in the dividend. The same holder may then prove his debt under the commission of another party to the Bill & he might in this way obtain his whole debt. Thus if he holds a Bill by the acceptor & comes a Bankrupt. & proves his debt & gains 10£ on the Pound — he may then resort to any indorser & if he has become bankrupt may prove his whole debt — & if the last pays 10£ on the pound he would obtain the whole.

as to the Proof. —— Whatever is Mercantile usage necessary to be alleged must be proved on- Lilly
ley - even the situation of the Parties it is 411
admitted. If there are special indorsements on the
the hand writing of the indorsee must be pro- 946
ved. But if the Plff is willing to forgive it he Stra
may strike out any blank indorsements — 354
otherwise he may fill them up & prove the Bael.
hand writing. - In an action ag. the acceptor 900
by any holder except the drawee it is not
necessary to prove the hand writing of the dra-
wer. For if any person has been guilty of neg-
ligence it is the acceptor rather than the Lloyd
holder. for the acceptor is more likely than 183
the holder to have knowledge of the hand writ-
ing of the drawer. In this respect it makes
no difference whether the acceptance was by writing
or parole. But where there has been an
agreement to accept this cannot be en for-
ced unless proof is made of the drawers hand
writing. If the (the drawee) should have a forged bill he must pay
it. And therefore he has a right to question
whether the (Bill) presented is the real bill of
the drawer. The hand writing of the ac-
ceptor must be proved. - Bill payable to
bearer - no hand writing except that of the
acceptor need be proved. If there have been

Bill of Exchange - several blank indorsement
the holder may if he chooses write over
save the trouble of proving them. The
hand writing of the Payee which the first
indorsee must always be proved - if in his
indorsement was in blank still his hand
must be proved but in such case the names
of the intermediate indorsers need not
be they are stated in the declaration. If
the acceptance was conditional - proof
must be made that the event has happen-
ed upon which the acceptance was to be-
come absolute. If a bill payable to order
was indorsed in blank - or it is payable
to bearer it is transferable by delivery. and
therefore the holder may be called upon to
show that he gave a good & bona fide consid-
eration - he had no knowledge of it having
been stolen or any manner forged when it
came into his hands. In
an action as an indorsee the proof is the
every respect the same as in an action a-
gainst the acceptor - substituting the indorsee for
the acceptor. In all these cases the more
remote liability of a third does not bar the second-
ary liability. before the holder has
given notice of non payment to the indorsers
& the drawer - or to any number of them

& anno one hand to the ... shall be said he cannot on account of his liability me the drawer. But if in order to free himself any indorser will pay the amount of the Bill to the holder – he the former indorsers may then compell the drawer – or indeed any indorser prior to himself to remunerate the money.

In an action by the drawer against the acceptor – he must prove that the (ii) acceptor accepted the Bill (& that receive it pursuant to 96. from that he had effects of the drawers in his hands) & that the acceptor is refused to pay the Bill when properly so demanded & that the drawer in consequence is- had it – the action lies. But the acceptor must show that he had no effects in his hands – where it shall appear that the acceptor is obliged to pay the Bill tho he has not effects of the drawers in his hands & he must prosecute his action ag. the drawer he must prove the having of the drawer & also that he had no effects of the drawer in his hands & that he has paid the Bill or that he has been taken in execution which pays the debt. And if the action is brought by an acceptor for the benefit of the drawer it must

108 Bill of Exchange – pre[sent]ment ~~to~~ to the drawee or his agent is necessary to charge the drawer in case the bill is refused payment & notice of the dishonour must be given to the drawer.

In all those cases where actions are brought for non-acceptance, or non-payment the instrument must be produced in court & this is conclusive evidence of what is in it & the hand writing of the drawer cannot be disputed. And according to the practice of the Exch. Court in this action it is not necessary to prove the bill itself must be produced in order to prove the declaration – but the same is to be proved as the Exch. Courts do in many other cases where the loss of a Bill that is lost is proved upon oath to have been – & cannot be produced in court

2 Ste 1851 & that his name is indorsed upon it by himself – & cannot be produced in court & that his name was signed upon the Bill. If a man indorses by an agent or servant – the hand writing of such agent must be proved & his authority or character

12 Vict. c. 42 s. 12 proved. – And it is not necessary that the exact form & authority of the warrant of attorney should be proved but it must be proved in such terms as that it can be seen that when the servant

Exchequer Chamber

Bill of Exchange — Penal clause of indemnification will not secure the insurer
against the risk. Nor when the condemned aliens are British subjects
& hostages
& aliens enemy — Can not be received
after mere Assent — Nor can a Bill of Exchange
be declared void, for Usury, by the Statute
of Anne, that the acceptor should not
be discharged — Bill of Exchange
drawn by Partners in the name of the House
for the Individual Transaction of one of the Partners
is void as to the House — Bill of Exchange
drawn for Smuggling Goods
Bill of Exchange — Penal clause of indemnification will not secure the insurer against the risk. Nor when the condemned aliens are British subjects & hostages aliens enemy — Can not be received after mere Assent — Nor can a Bill of Exchange be declared void, for Usury, by the Statute of Anne, that the acceptor should not be discharged — Bill of Exchange drawn by Partners in the name of the House for the Individual Transaction of one of the Partners is void as to the House — Bill of Exchange drawn for Smuggling Goods is void in the hands of a Bona fide Holder without Notice — Bill of Exchange void in the hands of a Bona fide Holder without Notice — Bill of Exchange void in the hands of a Bona fide Holder without Notice — Bill of Exchange

Bank Notes

102 Bills of Exchange - How to tender. If were above
not tendered & paid were determined that there
in 358 bill were a tender at all events. Neglect no
2 Geo 2 objection was made at the time on account of
c 26 the tender of Bank notes - it would have been
Hawkins Pleas of the Crown 2 Book 66 Chap 15 Sect 88 - 90
Sect - but can not be considered as made to
Hawkins the Bill after the limited time, or some
Book 2 Chap 15 Sect 88 - 92 part of the money being then due
Chitty on Bills 2 Edit 358 - 360 and not tendered - Payment after the
day is void - Bill 2 Edit 358 - 360 - Payment after the day is void -
Chitty on Bills

are to be signed by all three of the Directors
of the Bank and the Cashier is to sign
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] accepted the Invitation to [illegible]
an Address [illegible] Thanks [illegible]
[illegible] Bill [illegible]
[illegible] Clauses [illegible]
[illegible] which [illegible]
[illegible] when regularly [illegible]

Taking up the Bill in the Committee [illegible]
[illegible] Clause [illegible]
[illegible] Bill – The Question [illegible]
[illegible] that the Clause [illegible]
[illegible] Clause [illegible]
[illegible] which the House [illegible]
[illegible] Clause [illegible]

[illegible] Clause [illegible]
[illegible] Clause [illegible]
[illegible] Clause [illegible]
[illegible] Clause [illegible]
[illegible] Clause [illegible]
[illegible] Clause [illegible]
[illegible] Clause [illegible]
[illegible] Clause [illegible]
[illegible] Clause [illegible]
[illegible] Clause [illegible]

not attempts to take up the cases of Mercantile Law
But the final result of the whole is that if
the acceptor knew that the payee was fictitious
or if he did not know that Lack yet if he had giv-
en authority to the drawer to draw upon him Peam
he is bound to pay the Bill — & that the Bill 128
is the same as if it was payable to bearer & that c.h. Ex.
the name of the payee & indorsement of it is a 288
mere nullity. — This case was argued at
length in the house of Lords. Of the twelve Judges
(& it is their opinion which decides — the opinion
of the other judges being unanimously no more than
form) Chief Justice Eyre — Justice Heath and
Lord Chancellor Thurlow dissented. The argu-
ments of these were extremely powerful and
convincing — But the arguments of the other
nine Judges carry full conviction. They are
well worth reading. The liability of the drawer
of such a Bill had been before established and
an indorsee & indorsee are in the same relation
as in the other cases.
on the proceedings after Judgment in Actions
ages — The Com. Law allows a great variety
of executions of different kinds against the
Judgment debtor — viz — a capias ad satisfaciendum — in
which the body of the debtor is taken — a fieri facias
by which his goods & chattels & his land may be taken

100 Bill of Exchange — and be sure to date the Bill
of Exchange, as from the Date of the Bill
and the Value or Value Received — the Bill must
then specify the Sum — the Name of the Person
to whom it is payable — the Time when it is
payable, and the Place where it is payable —
and must be signed by the Drawer — The Bill
must be sent to the Person on whom it is drawn
for Acceptance — & it is then usual for him
to write the Word Accepted — across the
Face of the Bill — & sign his Name — If the
Acceptor dies & the Bill is not then due the
Holder must present it for Payment to the
Executor or Administrator of the Acceptor
& take his Receipt — If the Acceptor refuses
to accept the Bill it must be protested for
Non-Acceptance — & if the Acceptor refuses
to pay the Bill when it becomes due it must
be protested for Non-Payment — Bills are
sometimes drawn payable at a Banker's —
& sometimes payable at the Drawer's own
House — A Bill may be drawn payable to
the Order of a certain Person or to Bearer —
if it is drawn payable to Bearer it will pass
by Delivery — but if it is drawn payable to
the Order of a certain Person it must be
indorsed by him before it will pass to another
— An Indorsement is usually made by the
Person to whose Order the Bill is payable
writing his Name on the Back of the Bill —
sometimes he writes over his Name the Words
Pay the Contents to Mr. A. B. or Pay the
Contents to Bearer — or Pay the Contents to
Mr. A. B. or Order — A Bill may be indorsed
many Times — & the last Indorsee may
sue all the Indorsers before him & the Acceptor
— If a Bill is lost before Acceptance the Loser
may demand another Bill of the Drawer
upon giving him Security to indemnify him
if the Bill should be found again & accepted
— & if a Bill is lost after Acceptance the Loser
may demand Payment of the Acceptor upon
giving him Security to indemnify him if the
Bill should be found again & indorsed —
If a Bill is lost before Indorsement the Loser
may demand another Bill of the Drawer
upon giving him Security to indemnify him
if the Bill should be found again & indorsed
— & if a Bill is lost after Indorsement the
Loser may demand Payment of the Acceptor
upon giving him Security to indemnify him
if the Bill should be found again & indorsed
— If a Bill is lost before it becomes due the
Loser may demand Payment of the Acceptor
upon giving him Security to indemnify him
if the Bill should be found again & indorsed
— If a Bill is lost after it becomes due

about taking it & how this etc- Mercant. Le Caen
tion etten d take his body or his land— but
the officer cannot take land without ordi
from the creditr.
If the officer take properly not beleiving to
the detter he is answerable at the suit of the
owner of the property. But if the cred. be join-
ned in suit with him he must respond the dam-
ages to the officer. If a man is imprisoned the
creditr may take a note of him, or file a d
& then is not bound because he was legally
imprisoned— We see then that the imprison-
ment pays the debt— & that if the debtor is
released the creditr can no more proceed again
him— yet in this way the detter may be dilatori-
ly & liable notenly to have his property taken
for the sum due but even to be imprisoned.
It is true that if a detter were ill treated while
imprisen in order to make him right an ob-
ligation it might amount to duress and a-
void the instrument. The Com. Law is on
the subject of imprisoning a man for
debt is barbarous. For there is no one obliged
to maintain him & notwithstanding humani-
ty of others prevents his starving & exacts.
The laws now in beg. & Scotland is all the
Rule.— for the relief of imprisoned detters are

108 Bill of Exchange — somewhat relaxed. Now there is not to defeat creditors — but it is to secure poor debtors against starving. According to our Statute if the prisoner after having given 40 days notice to the creditor that he may attend & contest the oath will swear that he is not worth five pounds or that he is unable to bear the debt if it is left than five pounds he shall be discharged unless the creditor will lodge money with the keeper for his support. But if the debtor is discharged it is only his body that is discharged & the debt may be taken again for the same debt yet if he acquires property that may be taken. The courts must determine the weekly allowance which the creditor must lodge with the keeper
The Eng. by several Statutes from the 32 Geo III
3 Bl. C to the 5th Geo III have made provision for the
416 relief of poor debtors very similar to ours
5 Bl. C provided the debt does not exceed £100 &
494 now by that 48 Geo III the sum is extended to £
There been a great question in some of the States — whether the Legislatures of the respective States could make laws to release debtors by acts of insolvency when contracts with foreigners because the treaty said there should be no lawful impediments to recovery &c. Laws

said that it was an export- Mercantile Law
facto law — The Question came before the
district Court of the United States in a cause
in which I was engaged & it was decided by
Judge Chase that the United States had such
power — & the question has not as I know as
yet been agitated. The strange principle
of the Com. Law which allowed the con-
-may a man & perhaps starving him in
prison if he was unable to pay his debts
did not contemplate the present Com-
-mercial state of the world — But it was
then considered that any man could pay
his debts if he would.

Note William Murray was in 1756 created
Baron of Mansfield in the County of Nottingham
& was afterwards called Lord Mansfield
& Baron [illegible] 1st 1756 —

Insurance

Insurance – the strictest integrity.

see cas. rep. in Phil. & Pap. of the Com. Law. Jan. or Feb. 1810.

the property of an alien enemy may have been
seized. It seems that in both
the principle that such contracts were binding
on the subject and that the property
could not be confiscated. In one
case since published which was mentioned
the Court consulted with Sir Alexander on the
subject — but could never obtain a decision
whether from mere whether an alien enemy may
have his property insured — but he turned the
question to the point of expediency — holding
it to be expedient that enemies property may
be insured — that their men and stores being
they may have been carried in holding it to be ex-
pedient — & have too still in my own mind
doubt as to the matter & in the
event of war — for I do not think the mer-
chants would insure & may
[illegible] in the mean time I shall help the

[illegible] that [illegible]
[illegible] that the [illegible]
[illegible] that [illegible]
[illegible] that [illegible]
[illegible] that

Mercantile Law

that an alien enemy may not ~~[illegible]~~ sue
& is barred — but it goes further that an alien
enemy may maintain an action after the
war is over & peace & friendship
as to the country of which he was born & may
maintain it in the same manner as if
he were the subject of a friendly power
& may sue in the courts of this country
although he resides in the dominions of
an alien enemy property will not be liable
to be seized.

2 K.
6 5

As to Neutrals in partnership with an alien enemy
the Eng. have refused to recognise the rule
with respect to permitting them to maintain
action for their share & profits — but now the
Courts go along with the terms of the action & will
even stay in such cases the action if it be brought
in both their names.

As to what persons may insure — The Eng. statute
of Elizabeth — ~~[illegible]~~ The interest of the
assured in the subject insured must be
upon the Eng. principle & not individual may
insure — & accordingly ~~[illegible]~~ corporations except
the Royal exchange assurance company & the London
Assurance Company. It was held by these cases
that the Crown ~~[illegible]~~ could not insure

[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] may recei-
ve [illegible] so much as he shall have the prin-
cipal & legal interest — tho in fact the borrower
may be as much in fault as more than the
lender — [illegible] [illegible] [illegible] [illegible] [illegible]
brother be another case according to the rule
in the Mercantile Law agreed to di-
vide the profit & loss — & [illegible] [illegible] the
whole to willing [illegible] [illegible] [illegible] the
money to be to have credit for — & got the money, & ne
kept it — & brought it back & to recei- 8
ve it but the court said no — I doubt the prin- 60
ciple of this decision says Judge Reese — the
fact is he had money in his hands which he
could not [illegible] [illegible] [illegible] [illegible]

with the laws of nations and with the laws of the country where the case is tried. But the question is, what is considered as an infringement of the laws of nations. Both the question and the answer depend upon the usage of nations. Has any usage been established in this case? Perhaps 23 Vide in favour of the affirmative may be found in the 4 Dall. 37 practice of nations, but the weight of authority is against it. Almost all nations would all agree to it - it would be found on the whole to discourage contraband trade, which is the object of all nations.

The question is, whether the ship Grange is subject to confiscation for having on board contraband goods. The answer depends on the law of nations and the law of the country where the question arises. The law of nations is to be found in the usage of nations, evidenced by their conduct and treaties. The usage is, that the goods only are void if the owner is unable to show the law of the country where the contract is made, authorizing it. In cases where the policy is made to cover contraband goods, the insurer is liable to pay a total loss, if the goods are lost by the capture. By the general

[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

by the Engl. & Americ. Law & Usage
not be laid to the Value of the Property
insured. Other words, that is insu-
rable & may be insured.
Insurance cannot be made to indemnify
a Man against Losses, which he may
incur by Perils, which are not
usual & ordinary. Upon this Ground
Insurances have been declared
void against Perils of War. Upon the
same Principle Insurances have been
made upon Lives, Insurances
upon Bottomry & Respondentia
Insurance upon Freight, Insurance
upon Profits, Insurance upon
Commissions, Insurance upon
Wages, Insurance upon Goods
generally, Insurance upon Interest
in the Funds, Insurance upon
Bonds, Insurance upon Policies
of Insurance — The Engl. & Americ.
Law has therefore long since
settled that Insurance upon
Property is not void. But there
still remains a Question, whether
a Policy in the usual Form
can legally be made upon
Slaves, or not? Whether
Slaves are insurable Property
or not? Whether the Loss
of a Slave by Sickness, Ill-
usage, Neglect, Suicide, Flight
or Insurrection, is a Loss
by Perils of the Sea? Whether
Slaves are Goods? Whether
Slaves are Merchandize? Whether
Slaves are Property? Whether
Slaves are Interest? Whether
Slaves are Wages? Whether
Slaves are Profits? Whether
Slaves are Commissions? Whether
Slaves are Freight? Whether
Slaves are Bottomry? Whether
Slaves are Respondentia? Whether
Slaves are Lives? Whether
Slaves are Bonds? Whether
Slaves are Policies of Insurance?
Whether Slaves are Funds?
Whether Slaves are Interest?
Whether Slaves are Wages?
Whether Slaves are Profits?
Whether Slaves are Commissions?
Whether Slaves are Freight?
Whether Slaves are Bottomry?
Whether Slaves are Respondentia?
Whether Slaves are Lives?
Whether Slaves are Bonds?
Whether Slaves are Policies of
Insurance? Whether Slaves are
Funds? Whether Slaves are
Interest? Whether Slaves are
Wages? Whether Slaves are
Profits? Whether Slaves are
Commissions? Whether Slaves are
Freight? Whether Slaves are
Bottomry? Whether Slaves are
Respondentia? Whether Slaves are
Lives? Whether Slaves are
Bonds? Whether Slaves are
Policies of Insurance? Whether
Slaves are Funds? Whether
Slaves are Interest? Whether
Slaves are Wages? Whether
Slaves are Profits? Whether
Slaves are Commissions? Whether
Slaves are Freight? Whether
Slaves are Bottomry? Whether
Slaves are Respondentia? Whether
Slaves are Lives? Whether
Slaves are Bonds? Whether

[illegible]

But there are many [illegible] which are the cause of the [illegible] & mariners. But the Exp. law of the Irish is not to all men but those cases — It is therefore upon reflection [illegible] that I cannot [illegible] — I would [illegible] all those cases where [illegible] 7 & 8 [illegible] to give the trial in those cases where [illegible] 5th [illegible] may require [illegible] & save the [illegible] at distant [illegible] — I may [illegible] & [illegible] [illegible] [illegible]

Insurance – & the Hartford insurers may come up
on the Windsor line in case of a loss & thus pro-
tection to the latter insurers know
nothing of the same insurance at the time
to say the Mercantile law – but this effect the
com. law never – or next to never produces. It
seems to be a principle of the Mercantile law and
courts com. law & average will be so – as
a ship be lost the captain & mariners wages
wages. This mode of averaging we
appear to have been so anciently. As long ago
as when shares were 64 the owners
of the underwriters affixed to his name the sum
he insured – as there were ten underwriters &
the sum annexed to the name of the eighth for
amounted to the value insured – the two last in
case of loss were discharged. However the rule
is otherwise now.

& to the Risk to be insured against – all risks
may be & sometimes are insured against in one
& the same policy. [illegible] the ice – [illegible]
[illegible] that [illegible] the
insured – when such [illegible] in con-
sequence of the negligence or misconduct of the
insured or his agents – as captain & mariners
the sailed out of port at the time of the [illegible]

[illegible]

perils of the sea – men of war – fire – Enemies – pirates – Rovers – Thieves – Jettizons – where goods are thrown over board – Letters of Marque – Surprizals – taking at sea – Arrests – Restraints & detainments of all Kings Princes & People of what nation condition or quality soever – Barratry of the Master & mariners – & all other perils – losses & Misfortunes that have or shall come to the hurt detriment or damage of the said goods & Merchandizes & Ship or any part thereof.

[illegible]

[illegible]

and the Universities of this country include the article of Rum under this head. [illegible]

Insurance – [illegible]

[illegible]

[illegible]

[

Insurance - for more than it is worth - but if ship sunk
must recover it all - but if ship sunk & cargo saved
& owner could recover from underwriters
underwriters liable in case of gross negligence,
after misconduct of the master - he is not
liable for mere negligence. Owner of the cargo
with knowledge of the owner of the ship
is not answerable for the misconduct of the master
& mariners - Bulkley 145-152. The owners
and master are liable for embezzlement
of the mariners. It is also observed here that if
the master is dismissed from his employment
& another appointed in his room, the
former owners are liable - & the master is discharged
- This is different from common masters
for they are liable for robbery - or theft
of their servants - & must make it good -
& part with the thief. Owners are not
liable for goods taken out of the vessel
by mere force & violence. But
it is entirely wrong & absurd these rules are
supported. Lord H. says, the reason why
is because the ship is mortgaged to the body politic
& owners. The rule as now settled is that for

[illegible] Mercantile Law
[illegible] the same are due
[illegible] — [illegible]
[illegible] of the
[illegible]
[illegible]
[illegible]

and he knowing [illegible] Hammill Lee
that it was then said of the river in front of the
dwelling house of the said Lee [illegible] 1838
he left in a hurry - the [illegible] and not [illegible]
the measure. [illegible] but [illegible] because
other against it on the apprehension of it - that
was been decided a number of times that if the
public river or highway of the good to and the
[illegible] - The measure - [illegible]
the good was carried in the [illegible] and
but is not that the same as [illegible]
their own in a river. [illegible]
Recur [illegible] difference between a [illegible]
a legislature - who makes it [illegible]
unless [illegible] what therefore will
better [illegible] the [illegible] - [illegible]
[illegible] specially employed for the [illegible] or even [illegible]
their own use. [illegible] [illegible]
not impute [illegible] - [illegible]
if otherwise - [illegible] [illegible]
same as the negligence of the matter. However Marshall
a very late decision [illegible] on error -
from the case above cited [illegible] 166
does not in terms [illegible] - [illegible]
[illegible] but [illegible] whether the owners
[illegible] - will not be [illegible]

Insurance – a ship is insured for a voyage – in ex-
bark the case the loss will fall upon the assurers
814 unless there be great negligence in the master
who carries the goods – other remarkable cases occur
in it. But tho the words are full enough
yet if the cases are according to the usage of the
trade in which they are known – kept on board days in
by degrees – or are sold on board a sloop – the
insurers will be charged with the loss in
proportion to their risque – the usage is in-
corporated into the policy. Thus it is the usage of the Baltic
land for which bonded with Hemp & flax & divers
other by little of late trade has been extended
ed up the Hudson bay & the country supplied
with the articles. Hemp was then entirely
but a year or two – for in the beginning it was
it was the usage & still taken & the assurers lit-
Doug. tle by little. It was objected here that there was
Nobly no usage – there had not been time enough to
remmy way establish a usage – however the court held that
the loss fell upon the insurers – The court here
did not go upon the opinion of any particular
usage but upon the words of the usage that
year
as to the Duration of risk upon the ship the words
of the policy are commencing one year & so on from year to
year time of the risk begins from the departure

and accustom a Merchantile Life
to Work. — When he could give him a
due degree of Knowledge of Book
Book-Keeping & such Matters
as might be useful to him
in his future Life — He
then put him Apprentice to
a Merchant in Boston for
Seven Years — At the End of
the Time he set up for
himself in Trade in Boston
& followed it many Years
with Success & Reputation
& died there — He married
a Daughter of Mr Thomas
Hancock a Merchant in
Boston & had by her
Two Children, a Son
& a Daughter — The Son
died young — The Daughter
married Mr Henry Gardner
a Merchant in Boston
who left Two Children
a Son & a Daughter —
The Son died young
& the Daughter married
Mr Thomas Russell a Merchant
in Boston who left Two
Children a Son & a Daughter
both living — The Son
married Miss Sarah Sullivan
Daughter of Governor Sullivan
of Massachusetts & has
Issue — Mr Russell
died in the Year 1796
& his Widow married
Mr Stephen Higginson
a Merchant in Boston
who died in the Year
1828 & his Widow
married Mr Israel Thorndike
a Merchant in Boston
who died in the Year
1832 & his Widow
married Mr Francis
Cabot Lowell a Merchant
in Boston who died
in the Year 1837 —
The Daughter married
Mr Joseph Coolidge
a Merchant in Boston
& has Issue — He
is now living in
Boston — Mr Coolidge
is a Man of
Letters & has
published a Work
on the Life of
Mr Hancock
which is much
esteemed — He
has also published
a Work on the
Life of Mr Joseph
Warren who was
killed at the
Battle of Bunker
Hill — He is
now engaged
in writing
the Life of
Mr Russell
which will be a
very difficult

Insurance — says Judge Reeve in this case — the
outward bound risk continues twenty four hours
after arrival — & the risk upon goods till they
are landed — & so it would be in both cases by the
Mercantile law if there were no words in the
policy expressing the risk & continuance till 24
hours after arrival — or till the seamen are discharged. But the Elementary writers say the risk on
the homeward bound voyage commences when
seamen are discharged after the ship is moored &
safe — It is not
material whether the last be before the moorings
after provided it be before the 24 hours are ended.
Thus a vessel was hired for smuggling she had
seamen moored in safe port more than 24 hours — & the
seamen discharged. The cause of her being se-
cured existed before the seamen moored. but before
she sailed the seamen were discharged. But a vessel
was insured for six months & two days before the
six months were out she run upon a rock. The
mariners by their assistance pumping got her off
in till the third day — & then sailed — vessel &
cargo lost — The last tell upon the owners & not
on the insurers. But a vessel was moored in
safe & before the 24 hours were at an end
she was ordered to perform Quarantine — & the
vessel be kept while on Quarantine it is said the
seamen are not discharged. Thus says Judge Reeve

156

Insurance - parties except when the legislature
have declared in their own words to be void
do not in the common sense of the word
upon between the insurer & insured in which
how much it be known to the insurer
and not to the insured & the insurer
has any interest in the goods - which ought to
be done at the time - must be the state
they are in & not as they were
at first - so that there were merely colourable interest
- thus where one shipt on board nothing but
a cable - who estimated it at £ the court
held it as a colourable interest & held that the
policy was void - but the valuation by the par-
ties is always prima facie evidence of bona fide
interest & the party enforcing it as a wagering
policy must shew it is mistaken. But in
a valued policy if the real value fall short of
the estimated value courts will take no notice of
the deficiency unless it were merely colourable.
The manner in which the business of insurance
is done is frequently by Agents Factors or Brokers
The parties seldom see each other. The Underwriter
in such case is liable to the Insured for
a false disclosure of the circumstances of the property
so him also they may lose the premium - and
in such case the Broker has remedy against the Insurer.

the dirty gentry to continue unmolested their
treasonable practices. If you
will but turn this matter in your
memory - you will perceive the
necessity of instant action to pre-
vent - But it is not sufficient that
the power may be in your hands to pre-
vent - you must also make it manifest
that you are not influenced by
any private motive - You must
be above suspicion - Your character
is at stake. Your character must
be unimpeachable in order to insure
success. You cannot be too
cautious - or injudicious in your
behaviour. Your every
action will be scrutinized. You must
be upright - or injudicious in your
every action. You must appear
to be upright - or injudicious in your
every action. You must appear
to be upright - or injudicious in your
every action. You must appear
to

Insurance- A undertaking by one with another to make good any loss, damage or accident that may happen in a manner specified by the agreement between them- A contract by which one party undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event- The property or life insured is usually specified in the policy, as well as the events insured against- The insurer undertakes, in consideration of a premium paid by the insured, to make good any loss that may happen to the property insured from the perils insured against- Insurance may be classified as life insurance, fire insurance, marine insurance, accident insurance, and miscellaneous insurance, such as plate glass, burglary, live stock, etc.- Insurance may be effected with a stock company, a mutual company, or a reciprocal or inter-insurance exchange- In a stock company the business is managed by a board of directors elected by the stockholders- In a mutual company the business is managed by a board of trustees elected by the policyholders- In a reciprocal or inter-insurance exchange the business is managed by an attorney in fact elected by the subscribers- The premium charged by a stock company is usually a fixed sum- The premium charged by a mutual company is usually an assessment upon the policyholders sufficient to pay the losses and expenses of the company- The premium charged by a reciprocal or inter-insurance exchange is usually a deposit or premium note subject to assessment for losses and expenses- Insurance is usually effected through the medium of an insurance broker or agent- The broker or agent is usually employed by the insured to procure insurance for him- The broker or agent receives a commission from the insurer for procuring the insurance- The broker or agent is not liable to the insurer for the premium, but is liable to the insured for any loss that may happen to the property insured while in the broker's or agent's hands- The broker or agent is usually

or whereon a ship is loading. Marine Insce
the letter containing a representation of the
state of the property. But the Broker
does not undertake for the safe arrival
of the ship, but only that he will use
due diligence in the execution of the
orders entrusted to him. He is not
liable for the loss of the ship, unless
he has been guilty of some negligence
in the execution of the orders entrusted
to him. If the Broker is employed
to effect an insurance on a ship, and
he neglects to do so, and the ship is lost
during the time in which he ought to have
effected the insurance, he will be liable
to the owner of the ship for the amount
of the loss. If the Broker is employed
to effect an insurance on a ship, and
he effects a policy which is void in law,
he will be liable to the owner of the ship
for the amount of the loss. If the Broker
is employed to effect an insurance on a ship,
and

Insurance – [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible]

[illegible] Mercantile Law
except by the usage of Mercantile Trade - Here
[illegible] and Bonds are [illegible]
a wager. & the Law can not be altered with-
out great inconvenience & it will [illegible] the
Trade much discouraged if such Bonds
were to be declared void. Suppose a Ship
should be taken by an Enemy & ransomed
for a large Sum of Money. Is there any
other Policy but a Bond that can be made
to answer the purpose. Suppose a Ship
should be taken by an Enemy & ransomed
for a large Sum of Money. Is there any
other Policy but a Bond that can be made
to answer the purpose. But the quan-
tity of Gunn Powder must be made known
at the Insurance Office. If
there be a Policy on which Insurance when a
ship is open boats - would not the Policy
specify it more than there are Ships?
It is necessary that the place of departure and
place of destination be specified in the
Policy — if not the Policy is void the Insurers
never know already - and it ought to
be left in Policy for the Insured to name
name of the place it is nevertheless void - for
this is not analagous to other parts of the Mercan-
tile Law. for if one writes a note & signs his name
& it leaving a blank place for the Office to insert
the amount - he will be bound by whatever
the Office shall insert - unless of fraud or

[illegible] Mercantile Law
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] accurate without exten-
sive[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
for the had actually [illegible] [illegible] [illegible]
to also the insurers [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible]

a clause is also usually intro- Mercantile Law
duced into policies to enable the master to em-
ploy all necessary means to save the ship or ap-
purtenances - & sell it if requisite - but being
always at the expence of the insurers - or the
average goes to the insurers.
The policy also usually contains a clause expres-
sing that the premium is received. This tho'
usually observed means nothing more than that
security is given - & only throws the burden of proof
on the insurer - the object is that the insurer
may not be answerable for a loss after
part the receipt of the premium
[illegible]
[illegible]
[illegible]

France having declared War against Great Britain. And while the Militia of this
During the present War it was resolved—The Embargo Act was passed by the Congress—but
for a time was evaded, & the Ports were
kept by the British Fleets in a State of Blockade.
During that period an Engagement took place
between a Spanish Privateer & one of our Gun Boats
which was captured & carried into Charleston—by this
the Commanders of the Gun Boats were induced to
think that they would be entitled to a Share
of Prize Money.
But there is a question—whether the Officers & Men
employed in the Gun Boats are entitled to Prize Money
for Vessels taken by the Militia—Some Gun Boats
were employed in the Harbour of Charleston—but
they were not actually engaged in the Capture
of the Vessel—but were stationed at the Entrance
of the Harbour to prevent any Vessels from
coming in or going out—Can these Officers & Men
claim a Share of the Prize Money?
Another Instrument in Warfare is Night Fires
it is said that the Enemy have made use of

Battle III-C-1 book 14

maritime force [illegible] In the event of war which must [illegible] the place our commerce will need [illegible] in.

another ground of insurance a loss by capture and of forfeiting neutral character the sailing without documents — one set of passports — risk of sailing — invoice &c — There it is true may be forged as shown to the rebel — but the policy is void & the insurer will be discharged. However the want of these documents is never conclusive that the party did not sail with them — in case of condemnation for want of them it only turns the burden of proof upon the insured — he may never have lost them by accident — or had them taken from him — so it is with the case of letters in transitu — letters in Germany — the one when shipping a vessel goes forward & takes away her papers & the other remains with her — & finding no papers on board &c. If there are treaties the vessel must be condemned [illegible] — if we are bound &c. Belligerents often [illegible] & the vessel [illegible] — a breach [illegible] [illegible] [illegible]

182

Bum
Hutch
Lowell

544

The reason for the insured had a reasonable [illegible]
of [illegible] a letter stating that the ship was in
[illegible] that she was detained by
[illegible] and that the insurers should be
[illegible] and compliance [illegible] – the contents
of the letter were not known to the – however the
the vessel was not then lost – but was afterwards 118
taken by a French privateer – yet the insurers
were held discharged – because a misrepresen-
tation made the policy void as
and a fraudulent concealment of any matter of
fact by the insured must vitiate –
so also the insurer himself must tell the truth 3 Burr
and he had heard of the arrival of the insured vessel 1909
&c – in such case the policy is void and therefore
insurer is to be protected. There are such instances where
the insured need not be disclosed by the insured
[illegible] if a war has been carried on with a particu-
lar nation for sometime the insured need not
tell the insurer of it – they are supposed to know
that – but if the case is different it was represented
that Algiers & the insured upon seeing
of the vessel sent early in the morning & before
the news had been spread & the ship was not
actually declared – but yet he was insured this
vessel was not insured without making that known

Insurance – [illegible] – Suppose that a ship bound to [illegible] should be insured a certain sum – this sum must be lost – But if one gets his ship insured from London to [illegible] – it will be [illegible] to the [illegible] of the voyage – & it will not avail the [illegible] in the insurer to plead that his ignorance [have] been [illegible] that Captain Clay when the Capt. of [illegible]. – The insured need not disclose the circumstances such as shoals & islands [illegible] hurricanes thunder & lightning &c &c [illegible] known. – There is one kind of danger [illegible] which the [illegible] is not liable & which the insured is not [illegible] against [illegible] the ship [illegible] & [illegible] the [illegible] I want to know where the privateer is going & [illegible] whether she will [illegible] – yet he need not [illegible] – [illegible] is material it must be told – he must disclose [illegible] – [illegible] the [illegible] & [illegible] with any [illegible] [illegible] the [illegible] [illegible] [illegible]

my that she is sea worthy. Mercantile Law
ch. 8 Implied w[illegible] that the
[illegible] declaration [illegible] the
[illegible] be changed [illegible] the [illegible]
to meet. [illegible] that [illegible] mutual
according to law. — and that [illegible]
wanted a be light, [illegible] —and [illegible]
to overcome the [illegible] [illegible]
[illegible]
[illegible]
[

Intercourse - carried on by Detention of ships & cargoes

[illegible] the Venetians [illegible] the [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] detention
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] Loss
[illegible] by Capture [illegible]
[illegible] Capacity [illegible]
the subject of [illegible]
pacity. Neutral [illegible]
[illegible]
which [illegible]. Where [illegible] the
limited time after its continuance the insured
may abandon — but where a limited
time is not after its continuance it depends on
circumstances [illegible]
Barratry [illegible]
the Mariners [illegible]
goods with [illegible]. In [illegible]
[illegible] the insurer against Barratry [illegible]
To make Barratry [illegible]
Neither will [illegible] the
should insure against the fraud [illegible]
the insured should think proper to employ. The prac-
tice of insuring against Barratry probably arose
originally from the [illegible]
the underlying goods [illegible] neither could [illegible]
had insured against the Mariners. —
[illegible]
[illegible]
[illegible]

Barrelby & in the policy it was ~~Mercantile Line~~
[illegible] in any lawful trade — the [illegible]
without the consent & knowledge of the Assured
& the rebel was seized — The assured claim the
[illegible] because by the [illegible]
employ them in the trade they were then in and
[illegible] by any other person under
the Assured or his direction. 2d
The declaration stated all these facts and 2d
declaring the question whether on the
the recapt. by the voyage aforesaid or
otherwise of the premises & the matter therein
contained would amount to a loss — which
ought to be answered & from St. Jerk to Jamaica — & the
returning from the voyage & lying a day or two
in [illegible] & the [illegible] in a trade-
[illegible] was a loss — The declaration
[illegible]

ought to pay annual from Averaging Contribution — All
who are concerned in the property remaining
at a certain time are to contribute each one
his proportional part to repair the loss — this is call
an average contribution — (2) the owners of the
ship freight & goods are to make out the loss
& must appear in order to entitle [illegible]
[illegible] & that the [illegible]

Insurance

till the contribution

Capture devests the property out of the owner [illegible] Lee 39
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
recapter [illegible] [illegible] [illegible] [illegible] [illegible] 6.9 4
[illegible] [illegible] — If the owner of recapture restore post 212
before abandonment — the owner entitled
to [illegible] [illegible] [illegible]
[illegible] & the same principle applies in case of elec-
tion. & the owner of capture & recapture come
in [illegible] [illegible] [illegible] [illegible] [illegible] not
abandon if the vessel arrive at voyage or 2 thirds
if the salvage is more than the freight. and if owner
make no order if the vessel after [illegible] [illegible]
ships away from the captors — it is the same as
the owner recapture.
So if the voyage is defeated by the perils of the sea — pro tanto
as if the vessel were stranded upon the shore &c. &c. 3
goods lost — or if saved & no ship to take them & the 3/4
port of destination it is a total loss & the insured
may abandon. 3 Burr. 1198 — 1 Bl. 276 — Mill & Hall Dec 2 reg.
And upon the same principle a [illegible] is a to-
tal loss — There may be a total loss of ship & not of
cargo — so there may be a partial loss of both ship
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 195
[illegible] [illegible] [illegible] [illegible]

The insurer of a certain Mercantile Lace
knowledge that the insurer receiving the
property of the insured [illegible] with
vessel is stranded, the voyage frustrated — will [illegible]
ings to do the best you can with the property remaining in
ure what you can & this would be a
ment. It is sufficient [illegible]
me & [illegible] the [illegible]
[illegible] the vessel is loaded with indigo
cotton & sugar — the indigo & cotton may be lost
or spoiled & the sugar be good — the indigo &
cotton cannot be abandoned without the sugar
& more than a part have been insured in
a valued policy — or if distinct
insured in the same policy — would be in the
nature of a total loss & the insurer may ab-
andon one article & claim for the
ment must be absolute & not conditional —
Hence the insurer may after abandonment
maintain trover for the goods — Even the breach
of the insured (in parole) is deemed sufficient
to vest the property in the insurer. If there
are several insurers they are tenants in com-
mon of the property after abandonment — no res-
pect being had to priority of subscription.

[illegible] Mercantile Law
[illegible] is worth [illegible]
[illegible] the vessel — Boat [illegible]
cargo — freight [illegible] the vessel & cargo — [illegible]
remain [illegible] unmanned — the vessel be-
ing worth [illegible] the cargo [illegible] —
when the vessel — [illegible]
is worth [illegible] — [illegible] —
[illegible] — the [illegible]
the cargo — [illegible] the [illegible]
[illegible] — [illegible] the vessel [illegible]
& are [illegible] the vessel & [illegible]
[illegible] the [illegible] — [illegible]
insurer when [illegible] the [illegible]
the vessel abandoned — the [illegible]
3/5 of the cargo abandoned — [illegible]
the vessel & cargo [illegible] — 4/5 [illegible]
[illegible] & there is any reward or compensation, it is
by custom to be allowed — [illegible]
— This is [illegible] the Brit. [illegible]
in 1781 — a number of [illegible]
condemned in the W. Indies — [illegible]
and the [illegible] — when differences
arose the [illegible] treaty — the con-
demnations were [illegible] the [illegible]
restitution made — [illegible]
property [illegible]

Entrance - [illegible] the [illegible]
[illegible] - [illegible]
[illegible] - many were [illegible]
[illegible] - [illegible]
[illegible]
[illegible]
[

[illegible] will recover by the policy reasonable Loss
The insurers are bound to contribute as if the
[illegible] — [illegible] — [illegible] as they
do with — [illegible] [illegible] [illegible]
upon the ground of the action — [illegible]
[illegible] arising from [illegible]
[illegible] — [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible]

Tindall – if the value of the goods at the time of destruction be the same as at the time when the action is brought, the plaintiff can only recover nominal damages, which seems to be a reasonable rule, in most cases. But where the prime cost is ascertained, the value may be ascertained by the price it will sell for more than the prime cost – where it has been sold at the prime cost, the prime cost is 30£ – it will sell at the wholesale price at 40£ – if it had not been damaged it would have sold for 50£ – it is damaged 10£ one half – the value of the prime cost is 15£ – this therefore is the loss. The rule is in estimating the loss – to take the original cost price of the goods as corresponding with the then damage sustained. When the assurance is made it is common to the assurer & assured – & sign the assignment on the back of the policy in evidence. Bridal & Pinnel the insurer will not going into the box again.

As to the doctrine of return of premium – as treated

of in the books it is rather perplexed. Mercantile Lease
ings. – Where can judge there & think it is
not a difficult point at the present time. Tri-
al is the former & one apprehend. It would it there is no pth nu-
is no consideration – and the [illegible] the
real the expectation, [illegible] made to come
This is made true in general – but will not
rather explain it – It is said in the case
the contract is void ab initio – & the pre-
mium paid be returned – This can't [illegible] there
is not so generally true – A man may be under
an agreement that in case a thing should
when in fact it is not – but if it is true the
policy is void ab initio the premium must
be returned. If part of the goods are on board
& part not – the case is governed by the same
principle [illegible] – & part of the premium must Lowry
be returned – In the case where a ship Bourdieu
sails in a neutral port on board part are Doug. 451
added which [illegible] Butler went on diffe- Marsh.
rent ports – Butler said there was a ship 550
from – that the [illegible] Declaration stated
that there was a ship from [illegible] there
the premium paid must be returned. In case
of an insurance upon an unlawful voyage – as
against the criminal law – the insurance may be recovered back

Insurance - This says Judge Reeve is wagering policy
for inside the insured & breaks the insurance
that Tainter may be recovered - says
Lee would be liable if - Tainter is a
partner, & Tainter may recover in the whole
Lowry Burden sum as in case of Burden - Tainter knows
Doty. the loss - he does not tell it - & Lee knows
the risk by he will recover - To money
& for which sum & was with the money - the law leaves
in statu quo - Reeve says Judge Reeve & Reeve
is may not be implied as the risk is the con-
tract is executory the premium cannot be recovered.
Upon the same principle a premium for re-
2 Ves insurance within the stat. 19 Geo. II cannot be recovered
if captain at sea having taken a prize or be ordered
Bull. sent to have her insured - it turned out to be no prize
54 the vessel & crew were safe & recaptured - the
premium was not returned. When the policy is
void ab initio without the fraud or fault or
crime of the insured the premium is to be re-
turned - except where both parties are in equal
fault - per the Chief Justice Holt - the premium
cannot be recovered - the law is too dignified
& noble to split either part.
When the Policy is void for non-compliance with
warranty & not fraud the premium is to be returned
for no risk is run - as in case of warranty Vessel

with convoy – or at a certain day. Mercantile Law
[illegible] the case [illegible] the voyage is [illegible]
clear for the insurer to retain a part [illegible]
premium – This is not the case now but
[illegible] – But suppose the
ship is not sailed – by which the [illegible]
is void – there is no risk – there [illegible] in
[illegible] – and [illegible]
The language of the insured according to this case is
it – I have been guilty of the most vile conduct yet for me now, & can
recover the premium again. In the first case quoted above (Lee &
Chancery) it was decided accordingly & that the insurer
the premium should be returned. The Kings
Kings Bench have in one case decided this
But in a late case this question was brought
in the court of K.B. – It was held that the premium
should not be returned – There was in fact no risk
run – & it was by mere good luck that the vessel was
recovered. – The insured could not come into court
with clean hands & a pure heart to demand the
premium. Therefore says Lord Mansfield
the court in the last case decided with great propriety. It is a general rule that if the risk never
commenced the premium is to be returned, provided there be no fraud in the insured. As if the
vessel be insured from such a place – & the voyage
be given up. Indeed where no risk [illegible] the

Insurance- [illegible] Whereas the [illegible] contract of the insured - [illegible] the loss, tho' the insurance [illegible] the insured.
[illegible] there may be illegality in the insured, tho' not in the assured. There may be illegality in the insured, tho' not in the assured - The insured may know the illegality of the insurance before the insurance - & yet receive the premium - the law leaves them in statu quo. This is a principle of wide extent. But in ordinary case of illegality by the insured the insurer may keep the premium - but if nothing is stated the presumption will be that the premium is returned - The rule is that if the risk has not begun & run there is no apportionment of the premium the insurer is to return all. To-credit their time must be [illegible] to [illegible] & make [illegible] - [illegible] - Where there is a deviation the risk ceases till [illegible] - or if the insurance be upon [illegible] & the ship sails before the day [illegible] the voyage. Here there can be no return of the premium, because the

[illegible] Mercantile Law

[illegible] London [illegible]

[illegible] — There is no [illegible] — [illegible] the [illegible] — but in [illegible] there [illegible] — [illegible] — [illegible] there is to be an [illegible] Here the Court undertake it must be [illegible] — one certificate [illegible] — If there are two sheets usage in this case it is clear that there ought to be an abstention — Contrary usage it is difficult to make out a certain usage — I don't know how — for my own part I cannot conceive of there being a certain usage. That is the gen. Mercantile law usage must have it is of some importance — But I don't think it depends upon the usage of particular places. Suppose a convoy was kept at New York — a vessel going from the road of New York were detected in the fact — if she were to some place not insured against I doubt whether the premium would be abstained. A vessel was insured from London to Jamaica & home — to sail with convoy — she did go to Portsmouth & get a convoy. No usage to this was proved the action failed but a new trial was granted for this cause — but not [illegible] the action [illegible] usage was [illegible]

Sqtt vs Hill [illegible]

[illegible]

[illegible]

[

Int. Law is very various as to Mercantile Law
However it is established in general that
where the contract was when an illegal trade with
Courts of law have in general the sole juris- 457
diction in matters of dispute between the in- 2 Atk
surer & insured. Equity however has jurisdic- 559
tion in certain cases. The action of assumpsit is Bro. Ab.
in the usual action — sometimes the action of Cas. 525
covenant will lie — as where the policy is sealed
either will do but of this kind however are
settled by the merchants themselves. The long
practice of referring matters & arbitrations vide ante
chambers of commerce — has introduced into 2 B
policies a clause — providing that if any
difference arise it shall be referred to such
& such — But even when the time comes
one of the parties will not consent & leave it
to arbitration — & even if time passes & he
is not sued in a court of law he may revoke
the submission — No body questions however but that
he was bound on the submission & award. — It is
now settled that he is not obliged to submit to 2 Burr
arbitration & that therefore the clause in the 1042
policy is become nugatory. The agreement will
to submit does not bind either party — either in 12 C
Chancery or Law — The jurisdiction of neither court
is ousted by such an agreement.

Insurance – the Bottomry & Respondentia Bonds

[illegible] does not [illegible] to the [illegible] – it is [illegible] and money – & interest [illegible] – [illegible] – giving so much interest on time – & the risk ceases the moment the money arrives safe – if the ship is lost – the lender of the money loses all. Hence it is usual for the lender to take 15 or 20 per cent for the use of the money – the principal not being [illegible] at all. If the ship goes safe & comes back – the owner gets the principal and the interest paid – & for this the ship is [illegible] – the Borrower is also [illegible] to pay [illegible] provided the ship arrives safe. – The bond which the owner gives to the lender is called a Bottomry Bond – as if the ship or hull were a pledge – & hence the name the principal & interest is [illegible] the [illegible] (if) the [illegible] arrives safe & shall be liable the [illegible] do not arrive.

Respondentia Bonds are [illegible] – and personal goods on board are a [illegible] of the ship – & the [illegible] central are [illegible] the [illegible]

[illegible] Mercantile Law
[illegible] not until after declared the [illegible]
is entitled to receive the money [illegible]
the lawful interest. [illegible] notice - the [illegible]
there is a total [illegible] [illegible]
[illegible] - [illegible] [illegible]
[illegible] the [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible]

Continued by Charter Party

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
in the place of the former owner.

The master who buys victuals - necessaries &c abroad & vends
is no doubt personally liable — but the owners 643
are liable also to no greater sum than the value of
[illegible] of the Earth — and if master or owner [illegible]
master had been [illegible] with money in the
[illegible] & [illegible] it.

[illegible] ~~maritime law~~ in regard to Mariners
The rule is that [illegible] [illegible] [illegible] [illegible]
[illegible] on board — [illegible] [illegible] [illegible] [illegible]
one [illegible] [illegible] [illegible] [illegible] [illegible]
however the [illegible] [illegible] [illegible] [illegible]
happiness never is much like the appeal from
a certain justice who when a man was convicted of stealing a
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
times & then he might appeal if he [illegible]. [illegible] made a cap-
ital offence [illegible] [illegible] [illegible] [illegible]
conspire against the [illegible] [illegible] [illegible]
another port from [illegible] [illegible] [illegible].

It is the duty of [illegible] [illegible] [illegible] [illegible]
the [illegible] [illegible] [illegible] [illegible] [illegible] — and
[illegible] generally not till the cargo is discharged &
the tackle [illegible] [illegible] [illegible] stored. They
are to act the part of a Porter occasionally, but are

the same action - either at, the Mercantile Law
mark. - for a material difference in the
two proceedings - the judgment given in the ex-
cution is not like the judgment in a com-
mon right - - & hence arises the good-
ness of the action - the latter against the
surviving therefore is called the bank- note
of the company - for the purpose of making ex - but
it does not follow that the execution may
not recall the note & the company
respond & the executor may in such case be
put to the expense of making all the pro-
per defence - it is true, the company may
be compelled to pay the money, but
it may be recalled from the company - in the
mean time - But in this the surviving
part - can't you recover against the Execu-
tor - by the court of Chancery - upon a Bill, stating the
that matter - will the action, the
is an open to the party, the account - for
such case shall the executor stand still &
the bank not collect the money due to
the company - but the company
may at least the company's action - upon a bill
tion to Chancery by the Executor they will - to the

Co-partnership –

for this purpose both joint & private effects are liable
to be taken in execution indifferently for either
joint or private debts & may be made
over to the creditor of either or both of the
partnership upon a joint or private writ
of fieri facias or extent — but when the
joint effects are exhausted or
the joint creditors are satisfied the
joint creditors have no claim upon
the private estate of the partners
— but the private creditors
have a preference upon the
private estate of their debtor
— but when the joint creditors
are satisfied the overplus
of the joint effects is liable
to the private debts of the partners
— but in the case of bankruptcy
the joint creditors have a
preference upon the joint effects
— & when the joint goods of
a & b merchants in partnership are attached for
the private debts of either — only one moiety of
them is sold — as where a levy is made upon two
barrels of flour one only must be sold it is
not sufficient to discharge the debt — two more
must be levied upon & one sold & so on untill the
debt be discharged. But the mode which has been
found the most convenient is to levy upon & sell
property to twice the amount of the debt and
return a moiety or proportional part of the pro-
perty to the private estate of the other partner.
If several merchants enter into an agree-

Fletcher's case at the time of the sale the
[illegible] the [illegible] he
[illegible] [illegible] may be
bear an equal share; the injured party
with the assent of the majority recorded. But
it can bear doubtful. The [illegible] under a
Bill of Exchange [illegible] with
all [illegible] the other [illegible] as
to bind & make good to the [illegible] to
shall [illegible] Difference [illegible]
the Facts & nothing [illegible] is not [illegible]
to [illegible] Remedy [illegible] [illegible] the accident
Sir [illegible] or there [illegible]
Holt might have prevented [illegible] the
Holt and [illegible]
Lord [illegible] [illegible]
Holt [illegible]
Lord [illegible]
Holt [illegible]
Lord [illegible]
Holt [illegible]
Lord [illegible]
Holt action to the party damnified by purchasing
under such false representation. It has been
decided that where a testator destroyed a State
of his customs by running fowls in which the un-
derwriter [illegible] [illegible] [illegible] [illegible] [illegible] still
not be [illegible] [illegible] [illegible] [illegible] [illegible]
Lord the decision of his principal & recover. This duty
[illegible] [illegible] seems to be in the teeth of every re-

tional idea of principle in Mercantile Law
abominable practice – If the principal in bro. S.
recommend the act done by the Factor then
clearly is the principal may the duties herein men- Bac. Ab.
tion the Factor is compelled to pay the Fac-
tor a contract with the vendee in person
as principal. The Factor sold in a Factor's name
the principal but is Lec
to compel pledge to pay the debt. 18
when a Factor is known to be such – & even beyond
a commission purchases goods & promises to
pay for them – the principal is not alone liable
as it is not to be expected that every one deal-
ing with another who is the accredited agent 2 Ves.
Factor is to be examined into the extent of his 688
commission but here the principal has been re-
moved as the Factor. If the Factor does not
pay him – no one else is in
fault when Plaintiff discovers that the com-
mission itself & this pay – which at Com. Law he
retains. Where a Factor was directed to in-
sure & neglected to do it he was held liable
that a Factor in this respect the
principal was to be indemnified the Factor 2 Ves.
are made to pay the debt – not they bottle 230
Factor pay – Factor is pay Factor
in a state of – the principal bound again 18

Of Practice in Connecticut

and first as to the Jurisdiction of our Courts of law in civil causes — Single Magistrates — as Justices of the Peace have original cognizance of all civil causes in which the title of land is not concerned if the matter in demand does not exceed 15 dolls & of all actions on note or bond given for money ex. gr. & coupons & in two cases where the demand does not exceed 35 dolls. But an appeal lies to the next County Court if the sum demanded exceeds 7 dolls — except in action on note &c for money &c contained in such case no appeal.

But an arbitration note for more than 15 dolls & not exceeding 35 dolls the vouched just sup. is not cognizable by a single magistrate. It is not for money only but substantially to abrogate the award. If for more than seven dollars appeal must lie & therefore.

whether a note &c for more than 35 dolls but indorsed down below the sum it being for money only & vouchee's Wit. at sup. is within his jurisdiction Quere — decisions & practice both ways. Payne v Payne — 6 Conn. Rep. 484.

In analogy to the rule in case of appeal from County Courts (see post) it would seem that a note &c for more than 15 dolls & not exceeding 35 — for money only & vouched just sup. is not within his jurisdiction

1 Swift 26
1 Swift 107
Kirby 202
1 Swift 26
1 Conn. Rep. 395
1 Day 58
1 Root 90
1 Swift 126
an application.
1 Swift 48-9
Kirby 108
1 Swift 66
1 Swift 108

Jurisdiction of Courts - if either wit. is dead or become
1 Root interested - as by marrying one of the parties.
223-316 Qui tam prosecutions (ie by informer to prince) are
Kirb. 387 appealable by Defts - however small the amo-
2 Root 426 unt demanded are - & a criminal nature.
Stat. - 2 If in an action of trespass brought before a justice
- or an injury - & amo - Deft pleads title - the justice
cannot try the cause - Deft recognized with one
Stat. or more sureties in a sum not exceeding 67 Doll.
4256 to pursue his plea at the next County court in the
1 Bro. 108 County in which the land lies & to justify all dama-
N.L. 362 ges &c - but that Deft shall bring forward a writ of - the
2 Va. 54. 55 Justice must then certify the whole record to the C.C.
324-5-458 Deft cannot in this case alter his plea in the C.C.
Stat. If he does not pursue his plea in the C.C. the default
426 shall be recorded & a scire facias issue from the C.C.
2 Root on his recognizance. If he does pursue his plea & fail
301 to prove his title - judgment goes against him for
treble damages & costs. If he refuses to be thus recog-
Stat. C. nized before the justice - his plea shall abate & on
426 proof of the trespass judgment must be against
1 Root him. If the deft pleads the gen. issue & relies upon
410-458 his title in evidence - the Justice may determine the
549 cause as in other cases.
2 Va. 240 In actions brought for obstructing or raising the
1 Bro. 108 waters of a river & brot before a justice Deft pleads
Stat. 2 a right to do the act & that he has the C.C. & thence to Supl C

Duty of Sheriff to be paid on every appeal from Conn. Practice
a justice - It must be paid at the time of taking the Stat. 149-50
appeal. Subsequent payment not sufficient. Quere 2 Root
can the record of the justice be contradicted & prove 11-12
the fact. A justice may take a confession of judg- Stat
ment for a debt - with or without suit & the amount 248
of seventy dolls - & be taken only from the debtor in person
hereon - Record is made of the confession & execu- 108
tion may issue - Record must express the particular
sum debt or duty - as bond note book &c. In this 152
case costs are only allowed for the justices fee un- 236
less there was an attachment, when costs must be allowed
appear for the record. Where a plaintiff neglects to file 328-9-22-4-46
a recognizance & taken for more than 15 Dolls & the R.L. 393
original judgment exceeds that sum a scire facias
will not lie upon it before the justice - but debt be-
fore the Ct - Indeed no action lies upon it before R.L. 69
a justice. Quere will not scire facias lie before the
Justice? & indeed in all cases to enforce his own judgment 470
except against a garnishee where the sum demanded
exceeds 15 Dolls. (Note) A scire facias is a judicial
writ issuing regularly from a court in which a Jurb.
~~Judgt~~ court has been rendered for the purpose of carrying 220
the judgment into effect - as ag. an Executor - garnishee
special bail &c. The it lies in some cases pending
a suit & before judgment - Viel & of Abatement & amendment.

Jurisdiction of courts. A juror therefore only from that
Kirk. court by which the judgment was rendered or in
220 which the original suit is depending & regularly
only from that court & which it is returnable - ex-
Ind. Dict. ception in case of scire facias ag. the garnishee for
252 more than 15 dolls - or a judgment rendered by a
Stat. Justice - In this case it is signed & issued by the Justice
470 but returnable to the county court. If a Justice re-
having rendered judgment in any cause dies
or is removed before execution granted or satisfied
debt lies on the judgment - and if the debt or dam-
Stat. 29 ages do not exceed 35 Dolls the action may be brt
N.J. before another justice as in case of appeal - But if exceeds that
598 sum before the county court - But it must be brt
Dec. 109 within 5 years from the death or removal.
1 Bac 231 A justice cannot try a cause out of the town in which
300-313 he dwells - except where there is no justice in the
Stat. 46 town in which the cause is to be tried who is qualified
142 & fitted to determine it - but it is otherwise in crim-
2 Root inal cases. But the Governor Lieut Gov. Justices
357 & Judges of the Supreme Court may respectively
execute the office of a justice throughout the State
Stat. But when acting as single magistrates they have
241 no other judicial powers than justices - The jurisdiction the same as to the subject matter.
Appeals from Justices must be entered in the Docket of the C. C. before the second sitting. May appellee

enter if appellant fails in it? Conn. Practice
such is the practice Clerk Walcot - the sum 250 1 Swift
The several courts of Conn. Reed - or County courts 101
have original jurisdiction of all civil causes at R. L. 303
law - not cognizable by a single magistrate &c. Stat.
that all civil actions not other cognizable are 13
regularly commenced before these courts
Of all civil actions except on bond or note (action - 1 Swift
trover) in which the title of land is not in ques- 101
tion, if the matter in demand surmounts the St. Con
value of 15 dolls but does not exceed the value 28-127
of 70 dolls - & of all actions on bond or note given Kirby
for money only & vouched by two witnesses if the 280
sum in demand exceed 45 dolls they have final 1 Root
as well as original jurisdiction except that their 207
judgment may be reviewed by writ of Error
But an appeal to the superior Ct. lies from their 1 Root
judgment regularly in all cases in which the 440
title of land is in question & in all cases in which the
the value of the matter in dispute exceeds the 28-127-3-c
value of 70 dolls except in actions on note &c at sup 1 Swift
given for money only & vouched by two witnesses 95
In an action for trespass on land demanding not 1 Ro. 148
more than 70 Dolls no appeal lies unless title &c 2 Ro. 440
pleaded - Evidence of title under gen. issue not sufft. 1 Swift
But it has been decided that the right of appeal 95
does not depend upon the sum demanded as damages

diction of sums - except where the damages are
N.L.395 presumptive - as in case of tort - & where in case of
1 Root contract the damages cannot be ascertained
148-518 without introducing evidence extrinsic. The
rule is that if it appears from the record that
according to the rules for ascertaining damages
judgment cannot be rendered for a greater sum
1 Root than 20 dolls - (the title of land not being in ques-
525 tion) no appeal lies. It seems it will operate to
Hin.95-6 the judgment rendered in the sup. court in
Kirb.280-281 such a case may be arrested. | Thus if in back-
Hin.302 debt upon bill &c. for 20 dolls & damages $15
127-238 or on note or bond for 20 dolls. Such case dis-
276-518 missed by the court exofficio 1 Root 525 - 1 Root
2 Ro.137-42-370-377. - So tho the plff in back-debt declares
1 Root on a debt of more than 20 dolls & demands more
518 yet if it appears from his own book on oyer that
1 Swift no more is due, [illegible] by placing it on the record
96 in his objection to the appeal in the County Court may
Kirb.278 prevent an appeal. In an action on an arbi-
1 Root tration note for more than 20 dolls if it appears
27-238 from the record that neither the matter in con-
1 Swift troversy nor the amount exceeded 20 dolls no ap-
95-6 peal lies - Tho if the note is for more than 20 dolls
1 Root ~~no appeal lie~~ the case is prima facie appealable
223 In an action on a note or bond for more than 20$
316-516 given for money only & vouched by two witnesses

if one is dead or becomes interested an Comm. Practice
appeal lies & Tucker's Ch. C. In an action upon a Hirb. 88; Com.
receipt ag. an officer for not executing an exe- 1 Rand. 96
cution no appeal lies whatever the sum de- 1 Rob. 566
manded is - Tucker if it is for not executing mesne Hirb.
process - except where the action is brought before 38; 580
a justice &c for not executing &c an execution on a 1 Rand. 101
judgment confessed before him for more than Hirb. 153
seven dollars - So in an action on a receipt Hirb. 867
by an officer ag. a recepitman of personal property 1 Rand. 101
taken in execution - Tucker if taken & receipted Hirb. 40
upon attachment. So on judgment rendered Hirb. 85;
upon an award of auditors. Because is not 1 Rand. 97
appealable by the Stat. no agreement of the par- 2 Root
ties in the court appealed to can make it so - ex- 60; 577-8
cept an agreement to increase the demand by a- 1 Rob. Ci
mendment. So no appeal lies from a judgment Hirb. 17
by default unless there was a hearing in damages - 1 Root
ages - The deft is not otherwise restricted to be in 566
court - & in that case he can be heard in the court
appealed to only in damages. But on judgment 109
upon nil dicit appeal lies - Deft in court & the 566
deft may plead & defend in the court to which &c. 1 Rand. 96
No appeal lies from the County Court in a qui tam 1 Root
prosecution for a crime. It is in form & partly in 403
effect a criminal proceeding - R-L. 405 ——— Hirb. 269
So no appeal lies to a adjourned court. Trent Sup. C. Rep. 23 966

Jurisdiction of Courts – appeal may be taken from a
Stat. 22 judgment on a plea in abatement without awaiting
Vid. post 259 2 Wilk. the judgment in chief. But if the appellant
269 from such judgment does not make good his case
R. L. 991 in the court appealed to costs shall be awarded ag.
1 Root him on the judgement on the plea in abatement
324 & execution issue tho he should prevail on the merits
2 Will. & he cannot alter the court below. The appeal
36 must be taken during that term in which judg-
Stat. 28 ment is rendered. It may be taken at any time
1 Geo. 16 during the term in ~~which judgment is rendered~~
but it is prudent to move for it immediately after
verdict – or on an issue & the court after judgment
R. L. 990 otherwise execution may issue & subsequent ap-
peal it is said is no supersedeas –. appeal to the
1 Will. Superior court must be entered in the docket before
96 the record during the court or the appellant must
Stat. 28 advance the whole costs & the time of entering &
he cannot enter a bail after the jury are dismis-
sed. An appeal destroys the judgment appealed
from – unless the court appealed to court jurisdiction
R. L. 990 & even then & unless regularly the judgment
is suspended till the appeal is granted above
Stat. 29 but if the appellant does not enter before the jury
Feb. 1784 are dismissed – the appellee may enter afterwards
36 & have the judgment affirmed with additional
costs. or he may sue on the bond. The judgment

rendered in the court above in a distinct Conn. Practice
substantial judgment except in cases of appeal- Stat 119
lees entering. Duty of one dollar pay able en Ho. 475
every appeal from the county court. If not cer- Ho. 11-2
tified y appeal is void— It must be paid at the Kirb. 57
time of taking the appeal or the appeal will a- Stat 150
bate— Qu. can the record of the court be contradicted
to prove the fact. It has been decided that an unli- 1 Root
te querela is within the stat. and appeals & of 56
course appealable from the County to the Sup. Court. 518
Either party may appeal if the plff recovers any thing Ho. 5,
less than his whole demands— recovers if the judgment N.L.
is altogether in one's favour— he cannot— Or both 1 Root
may appeal & if either enters it is sufficient. 518. 56
If appeal is denied where it ought to be allowed error 2 Day
or lies— so if allowed & the court above do not quash
it. Qu. will error lie immediately on the allowance
of the appeal? I should think not except the Goods an
advantage may be taken in the court appealed to.
If a cause is not appealable & motion to an appeal is 1 Root
made objections may be made to the motion in the 518-302
court in which se or the appeal may be abated in the 181
court to which se. Or if a verdict is given against Kirb 273
him in the latter judgment may be arrested— Or 1 Ho. 525
the cause dismissed ~~by~~ the court ex officio— Or
writ of error lies if judgment is ag. him in the court
above. For the Equitable jurisdiction of Ct. see Powr. of Chancy

Jurisdiction of Courts. The Superior Court has no original
Stat. jurisdiction in civil causes properly so called. It
127-8-885 has indeed original jurisdiction when a suit is brot
1 Rev. 31-5; agt an officer upon the statute for not executing an
2 Ro. 251 execution issued by itself. — An action may be brought
1 Rec. 80. at Com. Law in the County Court — & this is the usual
practice — An action upon a statute however is not prop-
Stat. 28 erly a civil suit. — This Court also issues writs of Error
Swift Lucas returnable to itself — to enforce its own judgments
97 But this is a judicial & not an original writ & it gen-
erally grows out of the appellate jurisdiction of this Court
It has appellate jurisdiction of many causes de-
termined in the County Courts (explained ante)
1 Swift Its appellate jurisdiction of causes decided by City
97 Courts is generally the same as of those decided
Stat. C by County Courts. And an appeal lies to this Court
1854 from every sentence order or decree of the Courts of
Probate. For its equitable jurisdiction see Boro-
of Chancery.

It has jurisdiction of all writs of error brot for
Stat. the reversal of judgments rendered by County C.
151-2 or single magistrates in civil (& criminal) cases
Rev. 97 & of decrees in Chancery, hated by the C. Court. When
on reversal judgt would enter this diction in the Sup.
1 Root Court for trial he must do it in that Term in which
85 the judgment of reversal is rendered. Its jurisdiction
Stat. 349 in cases of divorce — mandamus prohibition and

habeas corpus are treated of under Comm. Practice
the in respective titles. Note a party may ap- Vide ante
peal from a judgment on a plea in abatement 50
where an appeal is by law allowed without pro-
ceeding to final judgment in the Court below
& if a dft after judgment or verdict on
his plea-pleads to the action instead of appealing
he cannot when appeal from final judgment
take any advantage in the court appealed to of
his plea in abatement

The Supreme Court of Errors has jurisdiction (in all
respects finally) of all writs of error brought for the
reversal of any judgment or decree of the superior Stat
Court in matters of law or Equity - where the 126
error complained of is apparent on the record
but has no cognizance of errors in fact

The General Assembly has cognizance by petition of cases
in which no other Court can grant relief provi-
ded the matter in demand exceeds 25 $.

Of the Proceedings by which civil rights are en-
forced in our Courts of Justice. ——

An action or suit is defined to be the lawful de- 3 Bl. 116
mand of one's right. The first stage of a suit in Comm. Law 185
is the writ & declaration which issue together Stat. 22
The Writ consists of all that precedes the statement of
the pl's claim - of the signature - the certificate of the 2 Dav. 188
duty paid & the recognizance where there is one - the date

Judicial proceedings. - is common to the writ & declaration
Stat. 24 The process contained in our writs is of two kinds - 1st
Ed. 188 by Summons & 2dly by Attachment. By Process is
3 Bl. 279 meant the means of compelling the deft to appear in
2 Ro. 88 court or in (court) of holding him to trial. In Conn. as
the declaration ifsues with the writ it is not necess-
ary to intitle the pltf to judgment that the deft should
7 T. R. appear - secus in Eng. By Stat. 12 Geo I a common ap-
Tidd 175 pearance may be entered (ie) com. bail filed for the Deft
by pltf. This process contained in the original writ
3 Bl. C. is called the Original or Mesne Process - as contradistin-
279 guished from final - or process of execution. In Eng.
273-280 There is a process distinct from the original writ
274 4th. when the writ is a Praecipe - secus when a Bill is
Tidd filed. In Eng. a writ & declaration ag. one
only is regular in case of tort - 1 Bos. & Pul. pr. 29
The writ must be signed by a magistrate as a Justice or
Assistant &c or by the clerk of the court & which it is
Ste. 24 returnable & must describe the court & which &c &
Ste. 46 the time & place of its session. Scire facias ags.
187 a garnishee on a judgment rendered by a single
Ste. 470 magistrate must be signed by him even when re-
24. 21 turnable. It commands the officer or person & whom
24. 41 directed to summon (ie) & give notice to deft & appear
pl. & attach his estate or person & have him & appear
before the Court &c. It is regularly directed & the
Sheriff of the County in which the deft dwells - his deputy

or either constable of the town in which & com. Practice
Constables have in general the same powers with- Stat. 26
in their respective towns as sheriffs in their counties 2 Lu. 187
& constable chosen & sworn in one year & re-chosen H. 588-4
may serve process before he is sworn a second time 1 Ro. 407
It may be directed to a sheriff only or constable only. 63-4
And a writ directed to the sheriff may be served by 1 Tres. 65
his deputy tho not named - even a special deputy.
Kirk. 240 - Comyn. 103 - 1 Bl. C. 116-339 - Salk 12-95-6 - Holt 221 - Hob 12-13
Bl. R. 332 - so in Eng. - Ordinarily the writ can be di-
rected to no other than one of the above officers -
But if such officer cannot be had without great charge
& inconvenience - it may be directed by the magis-
trate to an indifferent person - But the name of
the person must be inserted by the magistrate's own
hand and the reason of such direction must ap-
pear in the writ. Such direction issued in what Stat. 24
cases? When the time of service is expiring - when the 1 Ro. 284
sheriff & proper officers &c - Ever must the reason be inser- 1 Lu. 187
ted by the magistrate himself? - so it seems by Stat. &c
But the constant practice is otherwise - By new Stat. 1804
no writ may be directed to an indifferent person unless
there are two or more sheriffs described of diff. counties
except where in case of attachment Pff or his agent Stat. 6, 4
or attorney shall make affidavit that he verily believes
Pff is in danger of losing &c unless &c - affidavit to be in-
dorsed on the writ. The indifferent person need not 1 Ro. 284-5

Writs make oath to the truth of his return - Hawk. P. C. 63 - special deputy sheriff stat 986) That the indifferent person is bondsman for prosecution does not disqualify him - so - as to sheriffs & constables. The certificate of the magistrate as to the necessity of directing - to an indiff. person is conclusive. Holden 2 Kirb. 88 one by the Sup. Court that a direction to the sheriff or an indifferent person was ill. - But yet a direction to the sheriff and an indifferent person would be good 2 Root 285 ad quem on the last branch of the rule. If the return of a writ directed to an indifferent person is altered from one time - a time to another the writ will abate - The necessity might exist at one time & not at another. A writ ag. a town may be directed to an inhabitant of the town as an indiff 2 Ro. 369 person. A writ directed to a minor as an indiff 2 Ro. 88 person will abate. A constable having begun service within the limits of his town - as by attaching 1 Ro. 107 property - may go into another to complete it. - (ex. gr.) as to leave a copy &c (Blake V. Ranney 66) - post "service" 207 A writ ag. the deft of the town of B - may be directed to a constable of the town of B - & if he make service in the town of B it is good but he cannot serve it in Stat. the town of A. All writs & declarations & returns by 85 sheriffs their deputies or constables except in their own suits shall abate. A deputy sheriff cannot officially serve a writ for or upon the sheriff - since

he acts. to the sheriff is under his authority - Comm. Digest title
ity - But one deputy may (clerk) (deputy) execute writ for or upon another - so a sheriff may serve 273
for or upon his deputy Beebe 1 Rich. cases 1 - 1803
writs must be signed by a magistrate - as a justice 2 Rev
clerk of the courts &c. But a justice can issue ori- 18,
ginal civil process only thro' out the County in which (Dep.)
he dwells. By stat 1804 - he may issue into an adj- 24,
joining County such process if returnable into his 673
own County - (seems not) - so of subpoenas in civil cas
He may issue criminal process & bring a delin-
quent before himself - & process of execution in civil 247-175
cases thro'out the State - so he may issue a sum- Kirb.
mons or capias for witnesses in the first case thro 186
the State. A justice may sign a writ in favour of the 2 Law. 1878
town in which he lives & of course & subpoenas may N.C. 1 Rep 175
against it. Clerks of the County & Sup. Courts can stat. 2-
sign writs return-able to their respective courts 1 Law. 100
but no other. Accordingly & usage writs of error must 27,
be signed by a Judge of the Court to which it is return
able - not to be issued without probable cause shewn
for error. Formerly the clerk of the Sup. Court could
issue mesne process returnable to the Sup. Court
into any part of the State. Query now since there is a
clerk in each County? But the Clerks of both the Stat. 24
Sup. & County Courts may clearly issue process re- 129-131
turnable to their respective courts ~~[illegible]~~

Writ & Process - Writs are tested in the name of the Governor. They run into & receive their force in all parts of the State. All criminal process returnable before magistrates in the body of the State (viz) in term time or vacation are of the Court. Formerly Judges of the County Court & Justices of the Quorum could not issue original civil process or of their respective Counties afterwards they were enabled by Stat. to issue such process into any part of the State if returnable to their own Court. Now by a late Stat. 1790 they are all thereby to issue process in all civil matters to be served in any part of the State whether returnable to their own or any other court.

The Govr Lieut Govr Judges of the supreme Court know the Judges & Justices of the County Courts & can in all civil cases issue mesne or final process that will run thro the State.

The writ describes the place in which the defdt dwells - or wherein that in which the plff dwells. There in ordinary cases are the only necessary recitations but where the office or civil character of the plff or defdt is the inducement & the action - it must be added. as in cases on Executors or Sheriffs. - See Rec & Pleadings

In all writs in civil cases there must be placed a deity at the time of their issuing. - If returnable before a Magistrate - 17 cents - if before C. C. 34 cents - If bet sup. C. one doll. - If sup. Ct. of Errors 2 doll

on petition of an adverse nature to the com. Practice
for. Agreeable to Rule. Payment of the duty 1 Rock
must be certified on the writ in words at length 505
by the magistrate signing - Attorney writ of the 4.5
cause may be created from the time of filing a
plea. The writ cannot be amended by inserting 505
the certificate even tho the fact of the duty
in court. and a writ once filed without it
can cannot be converted into a writ by a notice
unless there is a further certificate of the payment Tidd
of a second duty - If it is the court may ex officio 150
dismiss it & tax costs for deft. - The same duties 2 Ro. 526
are payable on qui tam prosecutions - but not on
public prosecutions - a. is interesting to see
how remedies by the superior court that the
poll may take the advantage of the writ a certi-
cate of duty paid by writ of error - of the judgment
for deft. (Geo. 1804 Litchfield).

An every writ of attachment the pltf must give
sufft security to prosecute his action & effect & to Hid. 24
answer all damages in case he make default in 1 Ro. 563
plea pard. The security is to be taken of the adverse party
party as all bonds for prosecution are. This 505
security is called a bond for prosecution & is given Tidd
by way of recognizance acknowledged before the Hid.
mayor &c who signs the writ & at the time of the same 505
is. Deputy can not take a recognizance by

Writ & Precp - not reciting that he entered into recognizance with Bond
2 Salk 610 &c. - but directs the recognizance into mid as security - or the property attached for any damage occasioned by the attachment - or only for the costs? not decided - I believe however they said Gould that it is a security for costs only - For costs it certainly is a security. (See post. Jordan security for costs only.
But it has been decided that plffs recognizance is sufficient security to pay costs (Hyp. C. Easter 1795.
Post 161 and therefore the usual practice is to receive his recognizance.
This decision was founded on usage - and the Court that the recognizance was a security for costs only
However the object of the bond is to secure costs this practice is useless. For the plff is liable for costs without it - and if the object is to furnish a security for the proceeds attached the production of the stat. is defeated. The latter I conceive was the Gould was the object of the stat. (2d Inst.) However plffs security is insufficient - a new bond may
Post 161 be ordered on motion to the court during the writ is returnable. It has been lately decided that a bond for prosecution on a blank-writ was not good, that it must state - because it could not be taken of the adverse party (Hyp. C. Easter).
according to usage bond for prosecution must be taken on all qui tam prosecutions by writ & precp as the defts body is attached or arrested. Secus where

a qui tam civil action is brot by procch. Conn. Practice
at common. - Here the writ is the original in all the
cases of summons - Bond for prosecution must be
given by some substantial inhabitant of this State
in every case in which a writ issues in favour of Stat. 13
one who is not an inhabitant of this State - even
tho the procch is by summons. If the bond is not
given in the above cases the writ may be abated.
A bond for prosecution is to be given by some substan-
tial inhabitant on the issuing of any writ if it ap- Stat. 14
pears to the authority signing that the plff tho an
inhabitant is unable to respond the costs that may
be recovered. But in the last case says Mr Gould I
conceive says Mr C. still the writ cannot be abated
in the Court to which it is returned. for want of a
bond - for the signature I suppose is conclusive
evidence that the fact of the plffs inability to pay
costs - did not appear to the magistrate. But in
this case the plff is in motion by deft's proof of
his inability in the court to which the writ is re- Stat 20
turned compellable to give bond for prosecution
with sufficient surety or be non suited - so if his in-
ability accrues after the writ issues. But such
motion should be made in a reasonable time Sirb.
if possible - objection after the purposes in pannelled 344
& try the cause decided to be too late. If the incer Moot
ity taken is apparently sufficient at the time - the 168

Writ &c the magistrate is not responsible on its pro-
No. 168 ving insuff.t — as if the bond was ill — & this
rule holds even tho pltff sole bond is taken. So
in writ of replevin if the security is apparently
sufficient & he is not liable — Except where pltffs
1 Root bond is taken. In this case if pltff is not eventually
165-8 of ability to pay the magistrate is at all events
56-261 This cannot be apparently sufficient — as it takes
Stat. the creditor's security away (ie) the property at-
360 tached & leaves him as if nothing had been attach-
ed — The Stat. requires security & prosecute &c & to
Stat. satisfy & answer such damages demands & duty &c
162 In every writ of error bond with surety must be
R. L given that pltff shall prosecute &c & answer &c
410-11 (the pltffs bond not good. Every party appealing
Stat. from the judgment of one court to another must
28-30 give bond & for prosecution with surety — Appel-
1 Root lant's bond not sufft — Formerly not required on
208 appeals from a justice. — The appellant & surety
are bound that the former shall prosecute his ap-
peal to effect &c Hey this is not meant that unless
appellant proceeds the bond is forfeited — but that
R. L. it is if he does not proceed in the appeal — for the
300 appeal destroys the judgment. & The appellant & does
2 Aikens prosecute his appeal & fails the surety is liable for
1 & costs if they are not paid by the appellant & for all
the costs before & after the appeal — Abandonment

on an appeal & the defr is liable only Com. Dig. Action
for the costs subsequent to the appeal (2 Inst.) But
he is liable for costs only - & not for them if collect-
able from appellant. It is necessary for appellee to
take out execution & have a non est returned as K.L. 560
to appellant, personal property. It is said (1 Roll. 815) 2 Inst. 75
that non est inventus is not necessary to subject
the bondsman to the plff's costs. Then Scire facias
will lie on the recognizance - or I suppose debt -
It has been holden (1 Roll. 815) that the return of non
est invent. is not necessary to subject plff's bondsman
on an appeal (2 Inst. The proceeding is the same in
the other case (of bonds to prosecute) - Bl non est K.L. 390
as to the principal personal property the surety is 1 Roll.
liable. The imprisonment of the principal on the 915-6
execution will not discharge the bondsman. Indeed
nothing but payment of the costs discharges him
The giving of special bail does not exonerate the
defts bondsman on appeal. Nor does the bond on
appeal when the plff appeals discharge the bonds-
man for prosecution on the original process. Bonds- 1 Roll.
men for plff on appeal is liable for costs if defr prevail 914
tho plff dies before the return of the execution. 2 Stat 39
I suppose exonerate if defr appeal & dies when plff Rev. 563
prevails. — Bonds for prosecution are not within 56 5-
the stat. of limitation: as to Bail — (see post bail) 2 Inst. 175
Death of plff before defr discharges bond for prosecution Rev. 256

writ of error - of judgment in favor of the appellant
1 Rob. is final as to the bondsman on that appeal tho on
766 a new trial judgment is given for the appellee in
102-3d to - & so it is where if the first judgment is reversed by
Am. 356 writ of error.

Ca. 22 In chancery actions to be tried in the superior
2 Rob. & county court the writ is to be made returnable
R.L. 504 in that County in which the Plff or Defd dwells
Hogg-1 This rule held in action ag. officer & Com. Land
Tab. 584 upon receipt for executions - but where they are com-
Ma. 20 plained of under the stat. the suit must be brot
Virt. in actual court & which the execution is returnable
1.15 to of original writs - tho it may be in a different
county before the superior. if either party dwells there.
Stat. 26 where the title of land is concerned the writ must
Chapt be returnable to same court in that county in which
1st the land lies.

Equity in action may be brought in the county in
which the Plff or Defd dwells as in com. civil actions
but before single magistrate must be prosecuted
in the town in which the Plff or Defd dwells - except
where there is no magistrate in such town who can
stat be sued by the same then the Plff may sue in any
21 a magistrate in any of the towns next adjoining thereto
but in writ of error brot to the sup. court must be re-
Rev. turnable in the county in which the judgment com-
1795 plained of was rendered - to obtain a new trial

In transitory actions in Eng. the venue Comm. Practice
may be changed (on motion) for reasonable cause. Such
not of course & never by plea. 1 Bos & Pul. 20 - 1 Bac. 35 - 669-670
7 T.R. 735 - 5 Bl. 294 - Stra. 874.
Stat.
as to the time of return - writs returnable & the C. Ct 25
must be returned & the clerk's office on or before R. L.
the day next preceding the first day of the term 393
civil writs & petitions returnable & the Superior 1 Root
Court - must be returned & the clerk before the 363
commencement of the court. Later returns are how-
ever allowable if consented to by the parties - but
without consent under extraordinary circum- R. L
stances - as if an accident befalls the officer on 393
his way & the office - or if he is suddenly taken
sick or dies before the return. Writs returnable in
the county or Sup. Court must be made return- 1 Root
able & the term next following the date if there 315-6
is sufficient time intervening - Secus if error 3 Wils.
& unknown cited as in Eng. - (See Pleas hot) 341
as to Process & Service — of Process there are two kinds
viz Summons & attachment. Stat 24
When the Process is a Summons service is made by 2 Swift
reading the writ in the deft's hearing or leaving 188
an attested copy with him or at the place of his 1 Root
usual abode. Service on husband & wife are ser- 497-475
ved one is sufficient. If the officer makes
service by reading & undertakes service by reading

Precedence – The Courts of equity without any
statute will not stay the writ. Courts of common
law may & since the statutes do not specially
direct their proceedings will stay the writ
the may abate the writ &c. but it must be pleaded
that such acknowledgment is not genuine &c.
2 Salk not decided &c. – It has been held that
416 petition must be served & copy – writ of Error
& Error. – Lately so decided by the Exch. Ct. – Writ
of Error may be served by reading – Aug. 1804 Litchfield
180 On petition for new trial & writs of error if the de-
fendant out of the State – service is made by leaving a
copy with his attorney &c. & person residing
180 out of the State is not entitled to a summons
served upon him by reading a copy with him
to stand to trial

Stat. 24 Attachments are regularly served by attaching the
&c. 189 property & arresting the body – (In the Common
1 Root Pleas & Circuit &c. Courts it is well set-
54-128-563 tled that service by reading a copy is sufficient
2 Root to hold the defendant to trial – It is not clear if a return
150-346 that the officer may be taken to the jail. The officer
2 &c. 189 has no right to take the person body if he can find real
Stat. 400 estate sufficient to answer the demand &
Stat. 84 which the known to belong to Deft – Real estate
at Common Law seems is not subject. But the officer ought not to be
liable to suit if he omits to take the personal estate

if he is doubtful to whom it belongs — Comm Practice
Hampshire v Rankin Cit. 1803. (2 Str Com. Law 947. N.C.
the officer in such case may summon a jury 638
to ascertain to whom it belongs — & if he does not 2 H.Bl. 438
he takes or omits to take at his peril) Deft would
have no cause of complaint for the taking of his 1 R.L. 400
body — unless he tendered personal property to the
officer. It has been decided by the Sup. C. that the
officer having taken deft's body is bound before a. 400, 90
commitment to accept personal property if ten-
dered & to discharge the body. Qu. Sup. Ct. upon such tender
whether officer can maintain trover without proof of deft & Deft
escape? & the officer take the property so tendered Moor
he is liable & the deft to take imprisonment — to 120-4
of arrest or final process. decided contrary by R.L. 400
Court of Error — but holden that the officer may dout. Hob. 4-176
The Officer cannot break both the house & the body R.L. 400
he may not break the outer door of deft's house to Comp. 1
make an arrest — but in such case he may. Kirb. 43-2 Wils. 83
The deft's land is also liable to be taken by attach-
ment — but the officer is not bound to take land also
when he can find the body — & recovered is the jur- 190
tified as if the deft in so doing unless he is so dis- R.L. 363
rected by the Writ. An arrest of the body may be
made by an assistant of the officer in his company Comp.
not out of it tho he may be out of sight — Bac. Cit. Bacon 64
& property real or personal is attached. The officer

Process & levies - officer must leave with the wife or at usual
Stat. 345 usual place of abode if within that state a true
2 Swift copy of the writ - with a description of the prop
190 erty attached. If real estate is attached the
officer must also leave a like copy at the
Town Clerks office within seven days next after
Stat. 35 attaching the estate & before the time limited in
the writ has expired - otherwise it is not holden
against any other creditor or bona fide purcha
ser. But the omission of this copy will not a-
190 bate the suit. — It is intended merely to give no
tice to other creditors - or purchasers. Personal
estate attached is not holden to respond the judg
ment either to the debtor or any other unless
Stat. 35 execution is taken out & levied upon it within
sec. sixty days after ~~the same was rendered~~ final judgment, if the debt is not
190-90 except where it is under a prior incumbrance
Stat. & then it is not holden unless execution is taken
40 out & levied within sixty days after the incum
brance is removed. So also the lien on real estate
is lost unless execution is levied upon it & the levy
& appraisal is recorded within 4 months except
Stat. 35- in the case of a prior incumbrance in which
sec. case the proceedings must be completed within
190 4 months after the incumbrance removed. | It has been lately decided that the officer cannot attach real estate without entering upon it. S. Ct. Vt. July 1803

& a person in custody of an officer on Comm. Practice
def. an arrest in one cause - delivering to the pl. a writ
ficc an attachment against the same person in sick &
another cause is a good arrest. When personal & pl. Reb
chattels are attached the officer regularly takes 218
them into his custody & keeps them for the pur- 220
pose of levying execution upon them. But he 180
can retain them no further or longer Stat. 85.
than till 60 days after final judgment: with-
in that time execution must be levied or the claim is
is lost. The officer may however & frequently
does deliver the property to a receiptsman, i.e. a writ
to some individual who gives a receipt for the 180-190
property & promises to redeliver it to the officer Stat.
at a time certain or on demand. But the officer 686
takes the receipt at his own request & is not ob- 1 Ro. 455
liged to do it in any case — same practice on Exec. 92
The receiptsman is not bound by a promise to re-
liver the property after the expiration of 60 days
from final judgment - even if a promise to de-
liver on demand is not liable unless demand
be made within 60 days &. except in both cases a writ
where the goods are under a prior incumbrance 190
In this case the trust remains till the expira- Nork. 40
tion of 60 days - after the incumbrance is removed 1 Ro. 485
If then the promise is to redeliver on demand & no
demand be made within sixty days the receiptsman

Proc & service - is bound to deliver the property to [illegible]
1 Rob 404 to the sheff - & on refusal is liable to an action
Hun 451 In an action on such receipt it is not necessary
1 Hall 1 to the officer to have in the declaration that the
24 judgment or execution remains unsatisfied
Liable, or, in what action the State Treasurer
if a person sued the State may be attached
& the attachment if it will hold the owner to bail
Ld. Ray. 1 Qu. must not the action in the Ct. of the borough
1 Str. 1 the county in which the property is? Even if the
Barn. property be, & also the State - Is invisible
186 property as sheriff also to a debtor out of the State
may be attached. (as now) Visible property belonging
to an absent or absconding debtor is not exposed
to seizure - to seize it made by leaving a copy of the
Attachment with the Attorney agent factor or
1 Str. 548 trustee in whose hands the property is &
Hob. 64 this service alone is sufficient under the act
1 Roll Abr. to attach debts owing to a debtor out of the State or has
884 absconded in it - in which case must also be left
Stat. at his last or usual abode in the State. The writ
50 in the same wise in rem, property seized &
Hen. 387 due the absconding debtor is attached. But in all
cases where the debtor is out of the State at the time
of the action commenced & does not return before
the first day of Term in the same year the writ
& the return day of the second Term the

Dismissed the case of Penny vs Porter - in C.P. London M. Landau Cas. Dec. 1817 -

defendant not resident in limits of action. Practice
may & it appear probable that he has had no Stat
notice of the suit - the court may continue the 25
action to the term next following & no longer R.L.
at which time if he does not appear judgment 695-4
is to be rendered &c. & in all such
cases execution is stayed
till the plff lodges with the clerk a bond in a sum Stat.
to be the amount recovered & with one or more 25
sureties to refund to the deft - what he may recover 1 Dan.
or the plff by reversing or annulling the judg- 695-6
ment by suit to be brot within twelve months 2 Dan.
after entering up the first judgment. If no 26
bond is lodged the judgment is erroneous. Bac Abr. 1, 6
decided that the judgment was void - decision 1 Bro. 23.-6
since altered. The Stat. provides that real es-
tate taken upon such execution shall not be al- Stat. 25
ienated till after the expiration of the 12 months
or after a new trial had on a suit brought within
the 12 months. By a late statute if action is brot
ag. a deft out of the State (attached before a single
magistrate - & there is no appearance on the
part - the action shall be adjourned in action not
to less than 2 months & not exceeding 3 months & 4. "
then without special matter alledged on the de-
fendants shall come to trial. If judgment is rendered
by the magistrate against the defendant after the

4/8

Proceed to levy - scire facias against the garnishee is to be signed by the magistrate who rendered the original judgment - unless he is removed by death or otherwise before the scire facias is sued out - in which case it may be signed by any other magistrate. And where the demand in the scire facias does not exceed 15 dollars it must be made returnable before the magistrate who rendered the original judgment or if he is dead or removed (ut supra) before another magistrate - But if the demand exceeds 15 dollars it must be made returnable to the C.C. in Chancery in which the Writ or Debt in the scire facias dwells. In actions on joint securities or contracts if all the debtors are not inhabitants of the state service upon such of them as are - is sufficient to warrant them all to trial. In this case the suit is not discontinued of course - but if any of the debtors are the state are aggrieved by the judgment they may be relieved by Audita Querela. But if one of the debtors not of the state is an inhabitant of it - the service upon him by leaving a copy at the place of his last usual abode is necessary - The cause must be continued one term at least (at large) For in this case the Stat. does not give relief by Aud. Quer. if not continued judgment is erroneous

If the deft is under the care of a corner-Comm. Bract 166
sealer - the Latter should be called to explain - 1 Inst
but if he is not called - the writ does not abate 1 Inst 74
but time is allowed to cite him

The Officer (warrant) may not break the outer door
or window of deft's house to arrest his body or take
his property - secus of inner door. Comyn 1 - Blake 90 - Bacon
Darby 983 - Hob. 62 - Esp. 604-5 - Deft may be discharged
by the Court - arrest on Sunday void by the 29 Car II
Fourteen - to by civil service
of any civil process - Esp. 605 - Stat. C. 3, 6-2 Bl rep 22
But one's house is privileged only for himself - his
family & his own goods. If any other person or an-
other's goods are in it - the outer door &c may & the room
request & refusal be broken open to arrest him or
attach his goods. Where a person under an il-
legal arrest at the suit of one is fairly served
with process at the suit of another - the latter
service is good - Secus if any collusion.
A Deputy Sheriff cannot serve process for or upon his
the Sheriff - for he acts for the Sheriff & under his au-
thority in either case - But the Sheriff may serve
for or upon his deputy. Beebe v Phelps 6 C. 401 (1803) - 1 Bac 208
& doubtless one deputy may serve for or upon another.
When towns - societies - proprietors or other communi-
ties are to be sued - service is made by leaving a Stat 116
copy with the clerk or either of the selectmen - or committee men

Process, service - by Eng. a writing in custody for an offence committed with civil breach without leave of the Court or one of the Judges. (Jur. in Com. 1 Bl. 279 & the Time for making service - In such writ the Plaintiff or Plaintiff's Attorney at the time of issuing the same shall give the Defendant or Defendants 12 days (at the ordinary sittings in London & Middlesex) before the day 31 Geo. 3 c. 35 on which the Defendant is required to appear to the same, & at the Assizes - 10 days before the first day of such sittings in every County. But in such cases where it shall appear to the Court or a Judge by affidavit that there is reason to believe that the Defendant cannot be served within the time aforesaid, the Court or Judge may order such service to be made at such time as they think reasonable. 1 Chit. Pr. 378 & 379 - Service of writs of Summons shall be made by delivering a copy thereof to the Defendant personally, or by leaving the same at the dwelling house or usual place of abode of the Defendant with some person there resident, & if the Defendant cannot be found & have no dwelling house or usual place of abode within the Bailiwick, by affixing a copy of the writ on some conspicuous part of the outer door of the house or other place in which the Defendant lived when last heard of within the Bailiwick. 1 Chit. Pr. 379 - Service of writs of Summons shall be made by the Sheriff or his Deputy or by the Bailiffs of Liberties, Sheriffs Officers, Coroners or Elisors, or by any other person specially appointed by the Court or a Judge for that purpose. 1 Chit. Pr. 380 - Service of writs of Summons shall be made between the hours of 8 in the morning & 9 in the evening. 1 Chit. Pr. 380 - Service of writs of Summons shall be made personally on the Defendant by delivering to him the writ of Summons, or if he refuse to receive the same, by the officer or person serving it, showing the writ to the Defendant & informing him of the contents thereof. 1 Chit. Pr. 380 - Service of writs of Summons shall be made by officers not executing a writ or not returning it - or not making a false return. The time for appearance is 14 days. This rule holds good in all cases of mesne process in civil actions commenced under the Act, & not in the ordinary cases of writs at Common Law - & is applicable to writs of the latter as well as writs of Capias. 1 Chit. Pr. 381 & 384 Qu. whether it does not hold as to writs at Common Law in all cases where the Superior Courts have

considered to prevent default agt. Comm. Bailiff
ficers for not executing writ & that they may
have two days to seek their remedy. In all
these cases the day on which the writ is served
is included in the computation of the time &
that on which the court sits is excluded. And
if service is made on the last day allowed for
service - it must be completed before the eve-
ning twilight is gone & while there is light suf-
ficient to enable the officer to read the process
Suit am prosecution must be recent penalties
are not within the above rules as length of 1 Hart
notice — They may be brot by forthwith process. 436
(ii) a warrant issued on a written complaint
made to a magistrate 1 Hart 456. If however
they are brought in the form of civil actions as
in many cases they are the usual notice in
other cases is necessary I conclude say 10 days
at election after the writ returned & defts con-
servator is not within any of the above rules
It is sufficient that reasonable notice is given
and if in the opinion of the court the notice is 1 Hart
too short - the Court in its discretion will con- 174
tinue the cause or postpone the trial 1 Hart
one defs can not take advantage of a defective 405
service upon his co. defts.

Bail is of two kinds - to the Action & special Bail

Bail

3 H. C. 290 Dalt. 101

When the body of the deft is arrested under an attachment it is the duty of the Office to take such bail as he may be forthcoming in court unless the Office shall think sufficient bail cannot be had. This is Bail to the Office. — If the bail is offered the officer must release the deft from custody — But a deft arrested on mesne process cannot be committed or bailed without a mittimus signed by a magistrate (Dalt. 101) directed to the Gaoler declaring the cause of commitment & requiring him to receive & keep the deft till released by due order of law — A mittimus is necessary because the Gaoler may not take notice of the process — 3 H. C. 290 Dalt. 101 — 100-103 — 3 H. C. 290 Dalt. 101 — 100-103 — 3 H. C. 290 Dalt. 101 — 100-103

bee taken in execution the purpose is Comm. Practice
answered by a writ of capias by putting 6 Bac.
him in the custody of suff[t] to arrest & keepen 290
The security given is called a bail bond - the 66-2 writ
ligers are called bail. - The bail under one stat. 190
must consist of one or more substantial inhab- stat.
itants of this state of suff[t] ability & worth the 38-9
judgment that may be recovered. The bail bond & writ
is conditioned for the appearance of the defd before 190
the court to which the writ is returnable. This bail-2-3
bond being given the defd must be immediately 2 Hu. 191
liberated from arrest. If the officer refuses to 3 Bac.
take sufficient bail when tendered he is liable to keep
the defd - for false imprisonment. If tendered be- 12c
fore commitment to for false imprisonment
Co. Lit - 1 Bac 206 - 2 Wils 313 - 1 Com. 489 - 5 Bl. 582 - Crol. 196/141
If Defd is committed & prison for want of bail - he
can be obtained on the attachment no longer
than five days after the rising of the court in which
if then execution is not levied upon him within the
5 days - the gaoler must discharge him on ... Hawk.
ment of the gaol-fees. When the defd in the Execution
is dead leaving no executor & his relations or ... of the
the decline to take out administration - the ...
may be discharged by the court from which the
execution issued. be in Comm. (presume) The officer
may if he please release the defd without bail

they may take him etc. on Sunday and Comm. Bacchi surrender him to the officer afterwards Upon original arrest the bail are discharged. Peake 245-and 281-7 Doug-85-95-Lofft 396-8 Taunt 148-Esp. 605-Salk 262 Decided contra Holroyd 2 Barn & Ald 73-But see Hard Bar. 1 Str 535-Dougl 3 ed 95-Where the party is not found & surrender made before the return of the writ, bail are discharged Cowp 275-Dougl 95-96 The bail have recourse & may surrender the principal in taking their principal - But after return of writ bail can - either by surrender of principal or payment of debt be relieved. If the sheriff or officer by any false return make himself liable to an attachment & the writ be returned non est inventus the bail are discharged Esp. 605 The bail bond is negotiable Salk 262 Str 1148 Cowp 4 to 6 Ld Raym 1561-8 Mod 290-1 Burr 396-Ld Raym 281.- That the action on the bond may be in the plaintiff's name for Lt. Cont. Debt semble-for Recov but the writ & declaration must be in the name of the Sheriff 2 Ld Raym 1561-Str 535-1 Salk 99-but this is now altered by Stat. 4 & 5 Ann. c. 16 that no sheriff's officer's name. If the writ & arrest are false & irregular & the bail-bond be ipso facto discharged 1 Wils 325 - The officer. If the bail are insufficient the plaintiff may 2 Barn & Ald 54 assign & sue upon an assignment the discharge of the officer - & bail is cannot recover against the officer after returning the writ-But must seek his remedy on the bail bond. If they were charged with the

Bail. If there the plff having returned Non est an assignment of the bond — over the officer to an escape — it is a good plea to the latter that &c took sufficient bail — or bail apparently sufficient 1 Roll Abr 814 & that plff &c assigned & then the cause turns upon the question of fact whether the bail were sufficient. Qu. Is it necessary for the officer to plead that he offered to assign? or is it the plffs duty to demand it. The Stat. provides that no recovery shall be had against the officer unless it shall be alleged Stat. 1. 30 insufficient bail — or shall refuse to let the plff have the bail-bond — which seems implies that it is the duty of the plff to demand it. & that pleading a refusing to assign would be sufficient. (qu.) If the officer having recovered judgment on the bail bond, dies a scire facias by his executor is 1 Roll Abr 274 & cont. not barred by the defts pleading the original act The executor may still recover on the scire facias the officers fees & disbursements The deft cannot be twice holden to bail to the same 1 Sid 182 cause of action &, while a suit is pending & before 1 Mod 210 judgment the deft cannot be arrested again for the same cause — if he is the court will discharge him 2 Mod Rep 1 Formerly if the plff was nonsuited in the first action he could not afterwards arrest the 2d for 1 Lev 5 the same cause — semble now. Stra. 439-1209-2 Wils 381 But even now in Eng. in debt on judgment deft

cannot be arrested if he ~~was arrested if the~~ Com. Dict. C.
was arrested in the original action Str. 82-1030-Will 5-2 T.R. 58
Tho the conditions of the bail bond are that if the Stat. 13
shall appear at the time & place &c yet his non ap- Eliz.
pearance does not of course work a forfeiture of cap. 5 §2
the bond. For by the Stat. the bail are made lia- - 14
ble only in case of the principal's arrest and a return of non est inventus upon the execution
If then deft is not surrendered in court it is the
duty of the court to subject the bail to take out exe- Stat.
cution & have the diligence & have his body ta- 3
ken & if the deft is surrendered on the execution 2 Wils 4
before non est returned the bail are saved. &
however the principal makes a surrender(in) 382.
not surrendered either in court or on the execu- - 32
tion & non est returned the bail are liable. H. L.
Their liability extends to debt and costs. The return 35
of non est must be made to the Court of Record
both as to the person & personal estate & real
estate - for the Sh. is not obliged to execute real
estate in discharge or instead of the body. Stat. 13
The proper action to be brought on the bail-bond ap- Eliz. 5
pears to be debt. - the form the words of the Stat. Com. 75-5
it seems that a declaration will lie. Kirby 385-Ca. Ma. 28 - 128-9
In Engl. the action must be brought in that county in Bur
which the original action was brought - Lutw 152-6 Mo 565-Hob 125
8 Wil 348 - 2 Bl. R. 838 - but see contra.

Bail Indeed in actual custody of the principal upon the execution is not necessary to save the bail. For it is the duty of the officer holding the execution to make diligent search for him & if by the use of due diligence the officer cannot take him the bail are liable — else not liable. But it has been determined in a case in which the principal shut himself up in an inner room & by threats prevented the officer from taking him - that the bail were liable — such avoidance.

The return of non est inventus must be fairly made or the bail are not liable - & this ill be by an officer procuring such a return to be made unfairly for the purpose of subjecting the bail they are discharged. Tho it clearly is not necessary for the officer in order to subject the bail to delay the return till the expiration of the last day for the purpose of finding the principal - all that the law requires is that he not fairly & reasonably if the principal die before the return the bail are fixed - either bail by the death of the principal is discharged - by an actual surrender of the def. body in court either by the bail or principal. Rec 2 Salk 609 - 2 Ld Raym 1280 - 2 Burr 1078. &c. &c. by a surrender of the def. body in discharge of the bail is meant the actual bringing the def. into court & delivering him up to the custody of the court by the bail or principal or by the def. in discharge of the bail.

in which he might be taken by the use of due diligence or by his death (attach). Thirdly by Comm. Practice. (as will be seen hereafter) by his surrendering & entering special bail. Fourthly by B.P. accepting a plea without special bail in the words in Act. Fifthly by deft obtaining final judgment & Sixthly by the Principal Authority of Law.

A mere appearance in Court without a surrender & pleading does not discharge the bail (as does a regular plea). But if bail surrender in Court if it is necessary for the satisfaction of the bail that the surrender be entered on the record for no other than record evidence is admissible to prove the fact. 2 Lev. 176 – Kirb. 18 – Hob. 210 – Cro. J. 402 – Say 60 – 3 Bulst. 102. On such surrender the B.P. must move the Court that the deft be taken into the Sheriffs custody – Otherwise he may go at large & the B.P. loses the benefit of the arrest. Qu. is it not the duty of the Court ex officio to order the deft into custody? – It is not the practice. If the principal is in custody for a crime the bail may bring him up by Habeas corpus & surrender him. When the deft whose body has been attached appears in Court & does not enter special bail he must plead if the B.P. require it in the term of the Court & if the B.P. accepts a plea not containing these words – the deft's body is discharged of course the bail

2 Lev. 95

Kirb. 54

Hob. 50

2 Lev. 95

Kirb. 54

Hob. 50

Bail – In debt the defendant is surrendered in court
2 Root The acceptance of the bail is a waiver of the writ &
51 & binds the body. But if the defendant is bailed in
Butler's custody prevails in the original action & he is not
Case 8. obliged on a new trial being granted & called on
custody again. & therefore he is not obliged on the
new trial to give special bail – For this is given
merely to prevent his being taken into custody.
The deft has answered the law by surrendering him-
self at the return of the writ – & on obtaining judg-
ment he was [illegible] according to law
& may accept it, & it is not [illegible]
has been attached [illegible] in custody
is waived, – no special bail is given & the writ
2 Root prevails – / pltf cannot in this [illegible] countermand
101 the def bailed in order to give special bail
he has waived that right & submitted to plea.
[illegible] will [illegible] in which the writ prevailed
[illegible] & the def will be bailed as there
would be the same evidence & reasons. [illegible]
[illegible] in the new trial would differ on a new
trial procured by either party & whoever prevailed
on the first trial (causa qua supra)
Dal. 22 Appearance [illegible] the writ [illegible] in debt. The
Cases 8. Entry is that he [illegible] may cause [illegible]
Dal. 246 [illegible] &
2 Root 345 – 2 Hen Bl. 300
Bl. 302. [illegible] by [illegible] or otherways. [illegible]

not in general appear by attorney. but Lyman, Pritchard
vs. Hall. Dutton v. Tho. mayo. Ewdal 114 – Co Litt 121a 128a
Litchf. 44 – Co Litt. 83 – Executor or administrator may sue &
appear by attorney. but in Conn Superior court vs. Col. Ch. 6
ruled that an attorney must not appear for a town
(pltf) unless appointed by a vote of the town – or by an Ch. 9
agent authorized by vote & writing for attorney Litt 55
Infant pltf may sue by guardian or next friend but
not by attorney – vid Tr. Litchfield – Parsons Ch. Justice Root
Ch. Justice cannot appear as attorney 2 Dall
Special Bail – when a deft who has been arrested Stat 85
rested is brot into court by the officer or surety – is Bld
dered into recog[nizance] for his bail – or by his own motion the
desp[ondent] he may be admitted to procure bail
on which he is discharged as to body – Special bail 1 Dall
& Tr. Chart are sometimes discharged. This is called Special
in Eng. Bail above or bail to the action – when it is not Stat. 50
surrendered the is not allowed. Appeal will not vacate Stat. 50
Special bail – if the pltf require it.
Special Bail according to Stat. must consist
of 2 sufficient sureties – but this common & necessary sure-
ty. If the pltf does not accept the sureties offered the Stat. 59
court decides upon their sufficiency by inquiring of
witnesses. In Conn. special bail is given in open
court only – but the mode of entering into a recog-
nizance in a sufficient sum that the deft shall 50
abide the final judgment. The recognizance is made

Bail special = payable by the bail. It has been decided that the bail are not to render a recognizance
Bail 1 Str. 1 that the court may enter it whether it is rendered or not (Kirb. 57 81). In Eng. it may be taken before
Str. 90 a judge in common law out of court. If the recognizance is forfeited the special bail are obliged
to satisfy the whole judgment rendered against
their principal. But it is forfeited no otherwise
Bl. 3 than by the principal's avoidance & returning
L. L. non est inventus. The execution goes in case of bail
Str. 3 for appearance. In Eng the bail are discharged
by surrendering the principal before the return
of the writ facias against them. Tidd 14, 15
Str. 90 - 2 Rawle 50 - 17 - 1 Ken Bl. 74 - 2 Bl. 1, 60 - 1 Bac 216 - Bro.
In Eng. an attorney of the court cannot be special
bail - Bro. and maintenance & champ. 1 Bac. 103
Dougl. 451 - 2 Bin - Ken B. 61 - Acc in com.
In Eng. bail to the action & special bail were
Rawle 120 in the custom of taking their principal
a right to break in - Bacon Bayelle G. a right to break
in. Dun. and they may break & enter the house
of a stranger in which he reader & break in in
the night time being open. (Qu. is it necessary that
Bl. 58 the outer door be open?) - So not the same rule as
to bail & bail recognizance. Qu. whether special bail
recognizance in one state can take their principal

by virtue of the bail piece in another c. Comm. Practice
Decided that they may by such act in the case of H.L. 687
Robt Waldron[?] some years since. Lumsford in Virgin. Rep
who resided in Va. in an office having procured an Ha. Cp.
arrest may by an exam[?]-warrant retake the Ps. Hab. 29
prisoner in another state: as the nature & form In Sit-Sheriffs
of a bail-piece &c see 2 Bac. 291 – 4 App. No. VII-5 – It is Ante 27
merely an entry or memorandum of the proceedings in letting the deft to special bail.
If final judgment is rendered ag. the deft the
rule is that on the principal's surrender & H.L. 87
return of mesne process the special bail are Hob. 59
bound like bail for appearance to satisfy the
whole judgt debt or damages & costs. The usual & best
& most proper action ag. the special bail is a scire 178
facias – it being founded on matter of record. Kirk. 378
The Statute says the said debt may be brought
on the scire facias the judgment rendered ag.
the principal is affirmed against the bail with Hal. 59
additional costs. But the scire facias or other 99
proceeding on the recognizance must be ended & duly
the bail within twelve months after the final judg- 175
ment. But as bail to the sheriff are subject to about
the same limitations. It has been decided that 380
the 12 months are calendar months & not lunar Cr. Ld. 24
months. Generally the Com. Law. reckons H.L. 252 – 2 Bac. 191 – Chit. 620
the particular day on which judgment was rendered

Bail against the principal may be given in evidence
2 Bac. Abr. 22 upon nil dicit by the record - For no entry on the record
is made in the practice of the Exchequer Chamber
upon which judgment is rendered - but judgment being
entered on the last day of the term. Special
bail is given in the Court of Exchequer
taken - The scire facias or other process issued
ved on the bail with... Notice of the judg-
ment rendered in such court. The judgment in
the County Court in which case is not final within
the meaning of the limiting clause in the Act.
for it is destroyed by the appeal. In consequence
of this limitation - execution must be taken out
as the principal is not in court returned within
10 days return. And it must be taken out in such
season as that the return may be duly made &
not on the last day for it cannot
2 Bac. Abr. 175 ing so but it may be taken out at any time which
will admit of due diligence - So the principal
175 suit on bonds or recognizances for prosecution
Bac. Abr. 365- are not within this limitation. A recognizance
166 in the prosecution of an appeal by death does not
exonerate the special bail - In this case both bond
men are liable if judgment pass as the death of
Stat. 39 the principal in the return of non est inventus
Eliz. c. 8 damages and costs under the stat. special bail and
175 bail both therein may on judgment against principal

ag. them & before satisfaction maintain comm. Practice
an action against their Principal. and if a bond
of indemnity is given they may doubtless main-
tain an action upon it as soon as they become
liable (ie) on the principal's conviction & return (Boote
of non est inv. & before must be actually them 21-103
(i.e. in: & are harmless) (Arch) it is no objection to bail
that they are indemnified by Deft or any other
person — except in Eng. deft's attorney. If final judg-
ment is given in terms of deft the special bail & writ
are of course discharged — as bail to the sheriff would [illegible]
be if there were no special bail. and on er
roneous judgment tho reversed by writ of error
has the effect of a final judgment & will even
seemed a final judgment within this rule — As
a judgment in the sup. Ct by deft & reversed in Ct 25-6
of error — is a [illegible] judgment in the Circuit Court & there-
fore deft is not discharged from his recognizance 26-6
on writ of error (even in Eng.) & bail ought 30
not to be discharged on a judgment by deft obtained
in terms of the statute of Jeofails by the
plaintiff in which final action there should
the same rule of reason & law prevail that
generally. [illegible] Even judgment in their favor is
rendered for the deft in the declaration cause
that judgment is reversed in the Ct of Errors
by a single Magistrate & not appealed from & will

Bail special – Special bail are also required in certain cases by a rule of the Court. Special bail is required when the defendant is about to leave the country, or has absconded, so that the ordinary process of the Court cannot be executed upon him – or when he is in custody of the Sheriff, at the suit of the plaintiff, for some cause of action distinct from that for which he is arrested – or when he is in a situation in which he might be taken by some other diligence – or by his death before such return made. Special bail may be discharged upon motion if the bail are dead or insolvent – or if they become bail in another action – or if the defendant render himself in execution.

Defence & Pleadings. – The defendant having appeared (where it is necessary to give special bail – or put in bail to the action) is to make his defence within the time limited by the next stage of the proceedings. In the first proceeding after bail the declaration is filed of the declaration – a rule is then given to plead in a certain time after service of the declaration – which time is generally eight days after service of the rule to plead. If the defendant neglect to plead within the time limited by the rule, he is said to make default, or appearance & his default is recorded. In the C.B. the declaration is called the writ, & the term &

Plaint not written by him - Com. Practice
Sec. 2 Action cannot be called unless declaration
filed - but suit is instituted & writ
issued & filed as this unless the affidavit
is to be made that a notice for a trial
in which case the defendant is entitled to
10 days notice of the time. Plaintiff may then
have trial and execution if no defence is filed
& filed up to the term. In the sum. Court
it is natural to call the docket - Defendant
therefore judgment is not rendered in case
demand by that court till the cause comes to
term for trial - unless the plff moves that the
cause may be called. By a rule of both Courts
however the plff may at any time take judgment
by default - notwithstanding an appearance
for deft unless deft's attorney will declare in
open court that in his belief there is a defence 557
& unless he does this the court will order
a default to be entered - this is done in all
practice where there is no defence. After de-
fault made deft is admitted to the court for R.S. 135-5
many purposes - & to the purpose of moving in
bar heard in damages - on which motion or 14 & 96
hearing is to be had - as to the amount of damages Rule 86
only, & also in the form of proceeding in a writ
of judgment. Lord Redesdale 1874 - L.C. 485

hearing in damages judgment nec. Conn. Practice
ri fac. in. Civil actions and [illegible] - [illegible] damages are ascertained - but in certain actions
for money - the defend admits a cause of action
& the amount of the demand - it is to the case
of the obligation - except in case of [illegible]
and by indorsements [illegible] where no answer
made to a declaration for damages - here the
plaintiff must ascertain the damages by inspection, & subtracting the indorsements
if any. Same rule where damages are
a liquidated & certain sum & interest.
Admission or objection - or collateral articles
Here the court inquires of the parties as to
the facts. The parties - The admission would
subtract the indorsements if any. But if such
motion is made after default the dft may
in Conn. prove payments not indorsed & plead
by Dft. (Acc in Eng. 3 T.R. 302-3). In Eng. there be-
ing no motion to a hearing in damages but
a jury of inquiry - the rules which regulate
the amount of damages on a default are some-
what different from ours - There - if the damages
are presumptive a default admits only a cause
of action: But on an obligation for money it adm. T.R.
admits that & it is with the whole amount due but
during the [illegible] [illegible]

Defence & Pleading. ch. 8 Non suits 4 T. R. 657 after
nonsuit the return of the writ is guilty of any delay or
S. P. C default against the rules of law or of the court
205 he is adjudged non pros. & may be called a second
nonsuit — viz if he omits to procure bond for prose-
cution when ordered by the court or to give over
5 J. when ordered of his deed or book &c. The pltf
Salk. may also voluntarily suffer a nonsuit between
5 J. the defence made — & before the jury
have withdrawn themselves from the bar & not answering — But this must be done
before the verdict is delivered to the clerk. But
Bac. if the jury are returned & ad ultimum cognoscendum
5 J. he may become nonsuit before the last
verdict delivered to the clerk. In these cases
deft on motion has judgment for costs whether
he has made defence or not — but without motion
Salk. election must be made in the term in which
200 the nonsuit is suffered. In Eng it is common for
the plaintiff before the ~~plea~~ to be nonsuit while
the cause is on trial — if his declaration does
not state or his evidence does not prove a
cause of action. But the pltf is not obliged to
submit to the order — on being called he may ap-
pear & then the cause must be tried by the jury.
Lee in Salk. 78 & the necessity after nonsuit ordered
& entered is any evidence. after a nonsuit

required under the 31st Gen. Order of this court. Com. Practice
the 31st is directed that in case of the plaintiff's
proceeding to trial after notice of trial duly
given, he must proceed in the manner directed. 356
by the 31st rule, otherwise the defendant may 356
obtain a nonsuit, & the plaintiff shall pay 356
costs.

Costs to Retraxit — Costs must be ordered 260
against the plaintiff upon a retraxit after issue
or after demurrer made, & retraxit is entered
upon the roll in open court, & may remain 260
there as of that term. after a retraxit the plaintiff
cannot begin the same action anew but for the 260
same cause. Defendant in Chancery may with-
draw his answer by the solicitor or counsel
putting his name to the bill, & the plaintiff
may take a retraxit & retraxit of such bill
also — but after the cause is ripened for hear-
ing & answer in Chancery the bill cannot
be withdrawn. after retraxit the defendant must
have judgment for cost & the same shall not
be entered nor be made in the same term
in which the retraxit is entered — if nonsuit
is given in such case & plaintiff at the return of the
writ or some future time, before the entry made in the
term made in the practice is No appearance — after
which the cause is out of court — an order to receive
the money cannot be received without consent of both parties

Rule 6 Heading &c. &c. — This section may be read, but not printed. Instead an abstract of the same is to be made by the Secretary and laid before the Court at the next meeting.

Rule 7 Notice of motion &c. — Notice of motion &c. shall be given in writing to the Secretary of the Court.

Rule 8 Time of making Order — or pleading &c. Any Order or Judgment &c. may be made determined before the time appointed by the Rules in every case when from the circumstances of the case it shall appear to be reasonable & proper so to do.

Rule 9 Time for Pleading &c. — Any Order &c. may be made determined by the consent of the parties — by the Court — by the Chief Clerk — by the Chamber Clerk — by the Secretary. Also in chambers — which may be given in writing — or verbally — or in open Court — or in chambers. Also the action in the superior Court shall be made according to the old rule — by the opening of the Court in the morning of the third day where the term is to come next by the last day where the term is ended. This rule is made &c.

strictly regulated in practice since the common law
new regulations of the statutes and rules
is made in every term as to those causes which
are continued to pleading in succession.
As to changing & altering pleas. Under one plea
whenever the deft withdraws that he may rely
on his plea / he shall have liberty to alter it
in which case the court in its discretion may
oblige him to pay costs - & the plff is to have a Stat.
reasonable time allowed for making answer to 342
it - & the court exercise a discretion to a certain Short
extent in allowing alteration. But after the 415
deft has pleaded & issue & judgment has been
rendered upon it in any court he cannot alter Stat. 5th
from the declaration - as general issue in C.C. Kirby
appeal to sup. C. deft cannot plead in sup. C. 89
to an appeal from justices to the county court
But it is a general rule that the deft on an appeal
may in the court appealed to change his plea
made in the court below - as of course & without
costs - general usage - Deft changing pleas &c in the
form in this case. He cannot however go back in
the order of pleading - as from a plea to the action
to a dilatory plea - for the latter are waived by pleading
to the action - (vid Pl. & Ev.). Nor can he change
a plea of title in trespass on appeal. The rule
however has been in the sup. C. when appealed to

Defence & Pleading – ... & changing the plea made
below that it must be done by the opening of
1 Wms 64 the court in the morning of the third day the
term being one week – & of the fourth day if longer
This rule is never strictly observed & now almost
of course in the superior courts & is continued
by the rule to plead in vacation. The
rule as to changing in the court appealed to the
plea made below depends on usage. It clft
may however rely in the court appealed to on the plea
1 Roll made below there is no need of pleading it de
Abr 745-764 novo in the court above. 2 Ld Raym 1534 & the alteration of
1534 the plea under the stat. in the court in which
2 Saund 48 it was originally made it has been decided
2 Wms Saund that the clft may alter even after the trial has
117 f been begun. It saves a mere trifle in pleading
& the stat. says whatsoever &c. & replication made
1 Roll Abr in the county court to a plea in abatement to
681 may be altered in the superior court. But
the court will not allow clft to alter in any
Dy 2 case to making a new plea when it is incapable
of the action. The clft has been allowed
1 Mod 2 to alter by pleading de novo after a demurrer
Wms 117 f argued & the record delivered to the court for
2 Saund 48 judgment. It has been decided by the K. B. that
Cro Jac 208 pleas in abatement may be altered.
The issue being tried the cause comes to trial

Regularly matters of Law are to be determined by the court & matters of fact to be tried by the jury. Questions of law are however often involved in issues in fact — especially in the practice. In the other Courts issues in fact may by agreement of both parties be closed & tried by the court — but not without such agreement. Issues in law are always determined by the court. After a trial begun by the jury the court will not stop the hearing & dismiss the cause without the consent of both parties. The courts do not on giving the charge to the jury direct them to find — nor give any opinion upon — the fact or law. But if dissatisfied with the verdict they may in civil causes return the jury to a second & third consideration but not to a fourth. This may also be done in Eng. but it is not usual — as the Judge directs the jury in the first instance after the cause is committed to the jury no further argument or evidence can be heard.

Com. Practice Stat. 267 342 27 26-7 2 Hoot 25-45 (but in Criminal cases cont after begun by jury — post) Stat. 27 N. L. 396-433 Kirby 179-416 Sh. 118 N.C. 28

The party who takes the affirmative of an issue in fact — first exhibits his evidence & his counsel opens & closes the argument. After the def^t has entered upon his defence — the pl^ff having declared his evidence it is discretionary in the Judge 604 in Eng. to let the pl^ff into evidence on a collateral point

Issue & Trial – not before in controversy & then the exception
East 604 is to the merits of the principal question – or not. On issues in law the counsel for the party taking the exception – opens & closes the argument. On motions & interlocutory questions only one counsel can be heard on each side – without leave of the court. By stat. only one counsel is allowed to argue a cause even on the
Stat. 36 merits unless the demand is above 8 4 $ – or the title of land concerned – This rule not regarded
R. L. much in practice. If a person is arbitrarily
241-432 made deft to prevent his testifying there are
Ency. 420 two modes in which the purpose may be defeated at the trial first if there is no evidence against him the court will on motion expunge his
Bac. A. 285 name & permit him to testify – 2d if some slight
1 Root 489- evidence against him – he may on motion be
2 Root 282-420 tried first & on acquittal testify. As to oyer Bills of exceptions Demurrer to evidence see tit. Plea & Pleadings – For challenges to the jury see tit. Trial & Proceedings.

Sho. 377 The **Verdict** is the finding of the jury on the issue clearly & fully. Regularly every issue should be found affirmatively or negatively in the terms of it. It is not sufficient for the jury to say that they find for the plaintiff or that they find all the
1 Root 541 material facts stated. Yet if they find in terms

the substance of the issue the verdict cures defective
is good (Vin. Abr. N. 7. 4. 5. 7.) — The court may 1 Bl. R. 478
alter the verdict & make it formal where the R. 2. 434-5
substance of the issue is found. The Constable 1 Roll.
who hears & determines upon the jury may not be present 5. 5
while they are deliberating, when the cause
is ripe for judgment he carries it to their chamber. R. 5.
For diff. kinds of writs & their effects see Bac. Abr. Error 454-532
(Writ of Error) — (For damages see tit. ten. Actions) Ev. 304
If the jury give more damages than are demanded 420
&c — the plff may remit the excess & take judg- 4 Bac. 85-6
ment for the rest. (Interest when received see Mary) 1 Ro. 66
As to several damages where there are several R. 2. 208
defts. see act. Trespass & Assault & Batty. 453- Ev. 573-420
Courts may remand or supersede execution or attach. 6.
or writ issued improvidently. 283
As to costs — at Com. Law no costs were allowed 1 Bac
to the prevailing party. but the plff when un- 51
successful was amerced pro falso clamore and 1 Inst
the deft when judgment passed against him for the 288
unjust detention of the plff's right. Now in Eng.
costs are allowed to the prevailing party in most
cases by several statutes — the first of which is 1 Bac
that of Gloucester 6 Edw. I. Costs are regularly 51
allowed in favor of the prevailing party in all
civil actions & likewise in most criminal cases &c.
but they are never taxed to the plff in error 161

Verdict & costs – in the suit on Error – the Writ of Error
hop-en accordingly declaring that the Judgment is reversed – as the
Lib. 218 entry records the declaration.
2 Jac 268 Thirdly if the debt in the bill be exhibit
in such account – & the offset by the bill &
answer be such action against the bill to
recover the whole Debt – which he might have
obtained in the former action & prevailed the
same case no costs ought to be had & the Court
that it had no knowledge of the former suit
& was inevitably hindered from allowing &
exhibiting his account.
Fourthly on a bill brought to be relieved
against a Judgment at law upon mistake of the
Hoot case – no costs – like unto error. but where
57 if the mistake is occasioned by the fraud or the
negligence of the plaintiff
Bac Abath 2 vol 611 but in actions grounded upon
Judgment & Statutes & Recognizances at
Law for the most part only costs of the suit
2 Jac 29 shall be recovered & not damages
2 Roll 68-9 unless the debt or interest of
Hoot Lands or real estate is the principal mat-
58-160 ter in question. & unless the debt shall have ap-
-pealed to the Court of Exchequer – in which case the
10 plaintiff in recovery shall have full costs – & prevent

trivial prosecution suit. Reg title Comm. Practice
not necessary & the allowance will under 5 Geo 1st 18 Geo
2d & this Stat. agreeable to the practice that must have
been construed to extend to actions on the case
founded on contract. Thus Three for an exe
cution for 41£ – Execution delivered 18th Aprl
writ brot – damages 12/ & full costs allowed Com. 289
Whenever deft appeals from a judgment on
pleas in abatement & does not reform the plea
in the court appealed to cost shall be taxed ag.
him as to the judgment on the pleas in abate- 2 Str 1
ment & execution shall issue for them however 12
the cause may finally issue – & discourage Com. 269
frivolous exceptions. After a writ has been a
bated & amended if the Plff obtains final judg- 269
ment he recovers no costs which accrued be- Kirb. 89
fore the amendment except for writ duty & of- R. L. 391
ficers fees. On appeal from probate to Sup. Court 1 Root
by a minor the decree being affirmed costs 325
were taxed ag. The minor; qu. Should not the
costs have been taxed ag. the Guardian. 10 Pars. Ch.
On motion in arrest of judgment if a replication 1 Root
is awarded full costs are taxed on the final 373
judgment. If in an action against several
one is obtains a verdict & the plff proceeds
against the others – The former is intitled to cost
but he can have only one attorney's fee taxed and 486

costs only for prosecuting the writ, any fees
Stra- & fees allowed in the writ which
Stat the attorney, mileage & travel costs are tax-
able in such cases – even if the parties are
in jail – tho there could be but one bill of costs
taxed for both & travel & attendance for one only
each of the 2 more bills received in a suit on-
ly one bill of costs – & travel & attendance for
one only. An petition for new trial if the
respondent is cited to appear at the term to
which the petition is returned & the petition
itself is addressed to the court at another term
2 Root the respondent is entitled to costs. the circuit court
31 can try the citation tho the petition is not re-
gularly before it. In qui tam prosecutions
1 Sc the deft if acquitted is intitled to costs as in
civil actions. On judgment by confession
the magistrate can tax costs only for his own
Hist. fee unless there was an antecedent process &
156-162 there are the last must appear on the record
Ibid 108 to justify the taxation of any additional costs
Costs are regularly taxed in court by the jus-
Hist. tice, incl – tho it is held they may be taxed
see 251 after court. On judgment upon plea in abate-
ment costs are taxed in the C.C only with better
record clerk of the term – because the stat. pro-
vides that such plea shall be heard & determ by the Cir-

The attorney of the prevailing party in practice
has a lien upon the costs & may require the Ep 584
officer holding the execution or the adverse Doug. 226
party not to pay them over to his client - 1 Bl. R. 821 - 2 H. Bl. 440
But this lien is subject to any equitable claim 5 J.
of the adverse party - as if a bill - eff. 1 Ken. Bl. 24 - 128 - 217 - 65 J.
The party amending is to pay costs at the discre- H. 2. 435
tion of the court. (Stat. 28 - 3 - 342 - ordinary items
of costs between plff & deft. ...
For the mode of setting aside judgment see Writ
of Error - New Trial &c. etc. & Execution see tit Compl.
Execution" - Courts may amend & supersede ex- 183
ecutions or other writs improvidently issued. 4 Bac 668 -
etc & Amendments the ancient & true rule was that 3 Bl. - 4
no amends in pro. they anciently at com. law were 1 Bac. 80
strictly not permitted afterwards, except in the 1 Lok. 156
the term in which the act. occurred took place. 4 Burr 256
and according to the practice which commenced soon after 16-25
about the 13 Edw. I & continued a long time - not 17
even the slightest & plainest mistake could rep. 3 Bl. 410
clearly be rectified after the record was inrolled 4 Burr 256
& the term passed. at present amendments are
more liberally allowed in Eng. at com. law. and
when justice requires it they are permitted 3 Bl. C.
at any time, while the suit is pending before 407
final judgment but not afterwards. But now in Eng.
all formal mistakes are in general cured by Stat. & mail

amendments – which are numerous – the earliest of which is that of 14 Edw III: 8 Bl. C 407 – 8 Bac 90 5-6 & 2 Bac 1098 – Laws 16-28. These Eng. Statutes extend in general to artificial & formal not substantial defects or mistakes: 1 Bac 96-7-101-2 Hob. Hob. 118 – Cro. E. 644 – 8 Coke 15[b] 159[a] – & the terms kind are falsa latina – falsa spelling – nihiloinus &c – of the latter are numerous exs in the docket – want of proper signature &c We have two Statutes in this subject – The 4 Anne provides that in writ of error judgment or proceeding shall be abated stayed Stat. 4 Anne reversed for any kind of circumstantial 21. errors mistakes or defects if the person & the cause are rightly understood by the Court. This provision however is too general & vague to admit of any effectual application in practice. Pleas in abatement & special demurrers for formal defects are probably as frequent and as successful as if no such Stat. existed. 5 & 6 Stat. also provides that where in pleading in abatement – judgment is rendered in favour of Defft 22 the Defft shall have liberty to amend his writ on payment of costs & the time of the amendment. This Stat. extended & formal defects greatly It has been decided that a motion to amend under 5-6 the Statute was unnecessary. By one act passed in 1[st] – the several courts of Law & Chancery

may [illegible] permit the parties to commence
a new declaration in the nature of a declaration
the said declaration pleadings & other proceedings
the record in such cause whereupon & upon
at the discretion & the court. [illegible] thereon
the old or several declarations. And that the
costs motion to amend if necessary [illegible]
may permit) - from order the 8th inst. & that the
2d plea the writ only remain as now filed - that the
new assignment to the record may be &. & that the
plea-amendment may be made till after
judgment as the 1st plea in abatement only
Under the same rule may be made at
any time before the plea made & by
either party at any time before made & by
consent under the 2d plea [illegible] established to
stay the legal suit - that the mesne allowance
as well as the amount costs in taxing & due
time by with the writ the [illegible] & that the
taxable costs upon the writ of error
universally. The [illegible] in Scotland
upon validity allowing & that the old statute
formal action only were agreed to Under the
new every species of debt may be arrested ex-
cept 1st when the person [illegible] or
the party [illegible] & [illegible] & [illegible]
& [illegible] [illegible]

Amendments – the nature of the action. Where the
2 Lutt writ is not actually read – the Declaration &
205 Issue would not avoid it – & it were otherwise
Att has been allowed to waive the Demurrer &
amended – 1 Ld. Ray. 561 Clark & Jan 1800 – and
in Fairfield Ct Aug. 1803 – Sup. Ct permitted a declar-
ation to be amended after judgment upon demurrer
that it was no Issue. – Sec. 2 Wils 207 – 1 Wils. 20 – 5
Mod. 82 – 1 Bro. 549 – 2 Ro. Abr. – 1 Salk 15 Dyer. 264–316–438
Replication amended after verdict – Lutw. 407 – Str 641 –
Str. 182 – 2 Ld. Ray. 1481 – Declaration & special Ellis v Clark &
Error writ permitted to be amended by crossing the
1 Ro. 551 name of Co-plt – 1 Root 86 – Writ of Error mistak-
115–173 -ing the Court below amendable before plea.)
Not. 364 Writ of Error regularly not amendable in Eng.
1 Com. 344 Salk 49 – Carth. 520 – 2 Bac. 202–9 – 5 Mod. 16. 60 – writ of
error in Com. is in form an original writ – Lecon in
Pr. – 1 Bl. C. 256 xvi. After an amendment all the Court
the Def may plead in abatement de novo & do as
Hint if the amendments are made. For from the
5–6 time of amendment it is considered as a new
writ. But when a party has leave to amend he
may amend at any time till amended & Def. The
record of Justice not amendable on writ of Error.
Hint will be as one written mistake by which
175 to make the amendment to write the whole by with
the mistakes of the Clerk as amended.

after the term is past no writ of error can
be allowed unless the party is in the term who
proceedings in error may be awarded if out of
law. But a writ of error may be allowed after the
term upon the party's application to
[illegible] prosecution in 2 Hen 1699. Mic 9 & 10 Will
Cro C. 344 Carth 344 7 Mod 55. 1st Com Law no diff. as to
Amendments between civil & criminal cases
i.e. If the statement of an existing fact will make the
writ good it may be amended. Thus where the
defect in the writ is extrinsic it may be amend-
ded - if a statement of the truth will make it good
as misnomer misdescription &c. But if such
statement will not make the writ it is impos-
sible to amend - As in case it is in fact the
the evidence on which [illegible] there
can be no amendment. So if the return of a writ
is not the same cause. So if the return of a writ
is insufficient when the writ is right
writ is not the writ may be amended by stating
stating the truth. But where the writ is void it is im-
possible in the nature of the things to make it good
by any alteration - as if there be no signature of a
Magistrate - or certificate of duty paid - no de-
scription of officer &c.

In some instances a verdict may be amended

Amendments - by the court - as if on a declaration containing good & bad counts - no evidence is
1 Bos & given on the bad & the jury find a general ver-
Pul 320 dict as in the 614 it may be amended by the
Doug minutes & entered on those counts only for which
361-2 the evidence is applicable - but if any evidence
Barnes was given on the bad count - there a venire de-
478 novo must issue. So a mistake by the clerk
in entering a verdict may be amended - as in the
case of a term &c. Str 1197 - 1 Bac. 101 - Cro. C. 112 - 6 Mod
La Ray 935 - Str 514 - Salk 53. - and a special verdict may
be amended - as where a circumstance deemed
by the court material & clearly proved is omit-
ted - 1 Str 573-5 - 1 Lev. 134 - 1 Bac. 101 - Salk 47-8 - 4 Co. 52
Cro. C. 144. But in a criminal case a verdict
whether general or special is never to be amen-
dible - Salk 53 - 1 Bac. 101 - Ld. Ray. 141 - 2 Ld. Vid 11 Mod. 84 - Doug. 306

Public Wrongs

The rules of law under this title are as simple that it cannot be doubted must more can be said upon the subject than is the mere statement by way of illustration. The principles are more difficult, for they partake more of the nature of ethics than any other in the whole course of law. That branch of public wrongs denominated criminal law crown law or pleas of the crown, for they all mean the same) includes all crimes and misdemeanors. Crimes & misdemeanors 4 Bl. Com. have no definite distinction. The terms are 1-2-5 for the most part used indiscriminately for public offences — and are usually considered synonymous — except that the word crime signifies an offence of a higher kind and misdemeanor an offence of a lower or less kind. Crimes or misdemeanors consist in the commission of some act prohibited by law or the omission of some act enjoined or commanded by law. Public wrongs differ from private or civil injuries in that the former consist of an infraction or violation of some public right in which the community are equally interested & which is inherent

in a necessary relation to peace & existence of society. A civil or private injury consists rather in the violation or infraction of a private right — or the rights of an individual. — If it is said by Blackstone that every public wrong includes in it some private wrong or civil injury. but it will be found on examination that this is incorrect. Public wrongs may or may not include civil injuries, private wrongs &c. It is by no means always true that public nuisance may not be injurious to a particular individual & would that give the injured individual or an individual are liable to be injured. Indeed it is for this reason a public nuisance. In all cases where public wrongs include civil injuries it is the object of the law to give a double remedy. In such cases civil & criminal — as the act alone is considered a breach of the peace as well as an injury to the party, & entitles a remedy is given to the individual for the injury he has sustained & the offender is liable to be tried & a public prosecution for a breach of the peace. Tho there was in fact but one act yet there were two distinct wrongs or offences. Between the act itself and the crime there is a manifest distinction. The act

or the next act in the transaction. The Public Wrong
have transactions — The offence is the more
extended which the law imputes to that act
as one act may constitute two or more distinct injuries or offences — so one entire offence may consist of two or more acts — or a continuation of acts. Thus in assault & Battery a man cannot be prosecuted in each stroke separately which he gave or the time I have heard Lord Mansfield that where the public wrong includes a civil or private injury — the law affords a two fold remedy. This position is true in most cases but not in all. Generally if the public offence amounts to Felony any the private remedy is merged in the 1 Bl public remedy or punishment. The doctrine Rolle 2 merges in crimes amounting to Felony has been Hawk. reasons assigned for it. In a late case which I have seen Lord Mansfield on the council (arguendo) alledged for reason that if a private remedy were allowed there would be left inducement for the person injured to prosecute publicly & bring the offender to public punishment. But says Ld Mansfield I 3 T.R. doubt as to the soundness of this reason. — The reason would apply if crimes or an inferior kind. The only true & rational foundation for the doctrine

is that the public punishment renders it impossible for an individual to obtain satisfaction or reparation for the injury done him. & private remedy can never avail except in cases where the property [illegible] but being worn out & the person dies, the debt is gone & cannot be recovered. & the individual is allowed his private remedy even in such case it will be taking so much out of the public interest which the law will not do. But if an individual is injured & a friend or relative not concerning themselves as far as civil remedy.

Upon the doctrine of pardon in murder & treason. If it be in the case of murder treason no private remedy is allowed because there is no proper person in such cases to seek a remedy. It would introduce confusion into the law to allow the relation of murdered person to institute a civil suit for a pecuniary remedy as well as difficulty in estimating the loss sustained. But civil suits are brought in case of theft arson perjury and most other cases where there is no question of life or personal property. There are

had cause only to fear that where of-
ences against a state is punishable by public
[illegible] — the state is the sufferer or com-
forming public measures in time of peace. Re-
the other — in particular. the expe-
ment was made a while ago by the state
for the purpose of carrying the war, private
revenge, or private [illegible] but the
mentioned — The case mentioned by the Solici-
ormation for perjury & forging a deed, & [illegible]
[illegible] special verdict Brought
an action on the case against the Defen-
the court would not entertain the action — be-
cause it tended to no more punishing
punishing the crime, perjury.
on the right inflicting punishment for
certain crimes it is said to be founded upon
the law of nature. It seems to be agreed that
individuals in a state of nature are invest-
ed with the right of inflicting punishments
& avenging their own wrongs. But when these
individuals enter into society it was found
expedient to transfer this right to the com-
munity or state. They from that moment ceas-
ed to be their own judge and avengers. With
this expectation it was universally allowed right
to be authorized to inflict such punishment

as the most extensive & perfect principles. This idea of government being universal upon compact ought to be carried into execution & universally, permanently in most cases but not in all. The punishment of offences against the individual ought to be left entirely to the individual injured. What would make punishment, or vindictive justice the individual more clear, right punishing & punishment would not be right & punishment — no case, however trivial in taking away a man's life, for any offence ought to be perfectly elementary that accurate & metaphysical that no one can ever adequately advocate the contrary opinion. Burlamaqui has treated this subject as well as any I have ever read — but notwithstanding all that is said & written on this subject still the only true foundation & the only [illegible] ing principle is necessity (which when applied to government are the same thing) the truth must be found in nature but not such truth as we — exists — it is merely ideal & to be found in reasoning. — The end or final cause of punishment is the same

prevention of crimes - vindictive punishments are not known to the law and the law proposes three objects for the prevention of crime. The first is that the punishment be such shall have a tendency to reform the offender - or secondly such as shall deprive him of the power of committing a new offence or thirdly such as shall deter others from committing like offences.

4 Bl. C. 20 What persons are liable to punishment - Generally all persons are liable except such as are expressly exempted. All excuses which go to protect one from punishment are reducible to the single consideration of want or defect of will. Every person has power in in certain instances of law to do a forbidden act but not all a will to do such act - & the maxim is reus nisi mens sit reus. This maxim does not apply to civil suits - for here the injury sustained by another in the most possible consideration & the law does not regard the intent with which it was done 4 Bl. C. 21 But to constitute a crime there must be always a criminal intent.

The Law considers a defect or want of will - First where there is a defect or want of understanding - Hence infants under the age of

discretion or on it's attaining majority
may elect to disaffirm his own deed
deed - are entitled to protection against
claims of persons dealing with them
in the ordinary course of business
& not liable to impeachment for
infancy. Thus a general power made to con-
vey in the exercise of the act any power
is not liable to impeachment the attorney
discretion. An infant in order to
do acts for the care, protection & restraint
of his person or property may not have the power
must pay his own debts & may
make a will at 14 years of age
as in England. Thus an infant
may bring suit by his guardian
or next friend & recover the real
estate which descended to him
& may sue out writs of error
to reverse judgments against him
after he comes of age. So
he may bring suit for the recovery
of his personal property & recover
damages for the detention
& conversion of it, even if he
has sold it during his infancy
& received the money for it
& spent it. Infancy is no bar
to an action for a tort, even
if it arises out of a contract
for all his crimes except those of omission
Under the age of fourteen the presumption is al-
ways in favor of the infant - they are till this
time presumed not to have discretion - This
presumption may be rebutted from the age of four-
teen upwards & even before that age the in-

exemption in the case of a minor. Public Wrongs 305
to the trial is laid down by Hawkins - If a man who
ought to be well aware that an injunction
does direct is not liable to capital punishment, what
offence will capital punishment be liable to
Blackstone is persuaded that infants under 14
liable at all criminality - that seems to be the
true rule. If a person is not capable of
of will arising from want of understanding &c
cases - Idiots & lunatics can never be guilty of
by their crimes committed while in that
lunatic commits a crime in a lucid interval
he is as liable as any other person.
It seems to have been authorized formerly that
as persons that are deaf & dumb want the
principle organs by which their understandings may be improved they were excused
by reason of their want of will. But it has been totally
settled in the present King's reign that if his
understanding is such that he can receive & communicate ideas by signs - his deafness & dumbness
shall not excuse him. If the offender becomes
insane after the commission & before
arrest he cannot be arrested - If after arrest &
before conviction he cannot be tried - If after con-
viction & before judgment remains - judgment
cannot be rendered - If after judgment remains

& before execution execution must be had
1 Hale & in all these cases it is a question of fact to be
10-54-570 tried by the jury whether he is insane or not.
He who incites a mad man to do an unlawful
act is in the principles of morality as well as of
1 Hale law not an accessary but a principal. The mad
617 man is but an instrument employed in the ex-
Reling ecution of his intent. & such a man is liable
58 as principal he is not liable at all for as the
4 Bl. mad man cannot be punished at all & as the pun-
55 ishment of the accessary follows that of the prin-
cipal — if the principal is excused the accessary
is excused also
Secondly Want of will arising from intoxication
1 Hawk is by the law held no excuse. — Lord Coke says that
10 ca intoxication instead of being an alleviation of
4 Coke the offence is an aggravation of the offence —
125 the offender becomes a "voluntarius daemon". — Hawk
1 Hale says it should receive that a habitual dis-
32 bility produced by frequent intoxication would
1 Hawk in many cases excuse the offender — such intox
29 ication is not in contemplation of doing an un-
Co Litt lawful act. A man may by imprudently plung-
44 a ing into a cold bath or in stirring his usual
course of ideas as to be led to do an unlawful
act involuntarily — & the same may be the
case with drunkenness. Punishment for offences

committed during intoxication how- Public Wrongs
ever it must be confessed is founded more on
policy than in strict justice. Where intox-
ication is not voluntary by force or fraud of
another person crimes committed during
such intoxication are excusable - for the
is not answerable in such case for want
of understanding - Thus far as to a defect of will
arising from a defect of understanding.
The second case of a defect of will is where the
crime is not done voluntarily but by mistake 1 Hale
or accident - where the will is neutral - this is 39
excusable - But if a man when voluntarily 1 Hawk
doing an unlawful act doth by accident or 5
mistake commit such act he is not ex- 4 Blacke
cusable for the latter are more than for the 124
former - for in all other cases it is just as just Reasons
the consequences ensuing necessarily from an 125
unlawful act. As ignorance or mistake in
point of fact will excuse him who commits
a forbidden act. Thus if a man in the night
breaks open his neighbours house thinking it
to be his own he is not liable criminaliter but
yet he is liable for the civil injury to the house.
But no man can allege ignorance of law in
excuse for a crime. He is always decreed to know
what the law is & the presumption that is in

know the law is to know the reputed
It is matter of fact only that ignorance of law
private cannot be given in evidence to excuse. —
Hale The difficulty of proving the affirmative which
P.C. is always the proper reason it almost im-
46-8 possible to ascertain the fact. There is a
1 Hawk material difference between a mistake or
55 ignorance of a fact & ignorance of the law
1 Hale In the one case the will does not concur with
42-3 the act for the man did not know that he
1 Hawk was breaking his neighbours house — In the
5-11 other case the will concurs with the act
Ld. R. for he knew he was breaking his neighbours
5-9 house but did not know that it was unlaw-
ful.
2 Hal. C. The third sort of cases is where the defect
2-8 wants will arises from necessity or compul-
1 Hawk sion. Thus a woman may do unlawful
46-7 act by the coercion of a man in company
Ruling of her husband is excused by the law in both
81-2 cases. Seems it a man robbing. Married women
Holland are not however excused for all crimes done
63 under the coercion of their husband. For theft
Bac. Abr. burglary they are excused — but for treason mur-
28-29 der piracy & other crimes against the laws
Glanv. of nature they are liable. But it is said by Fleta
7 Fleta that if a man threaten to kill & cut off the

treason for the distinction between Petit Treason
Burglary & Robbery. It seems to me very idle
that the one is as much an offence mala in
se and against the laws of nature as the
other. The reason which Blackstone gives why
murder treason robbery &c is not excusable
in a married woman can not conceive nor
no manner be supported. Treason is not nor
can it be an offence mala in se — because in
a state of nature there is no such thing as
treason — Treason can be no more than an
offence mala prohibita. The true foundation
says Mr Gould I conceive to be that in all mi-
nor or inferior offences the law considers her
obedience & submission to the will & command
of her husband as a paramount duty to that
of obedience to the law — but in the larger of-
fences her obedience to the law is to be paid to
the husbands commands as paramount duty &
coercion can never be an excuse for manslau-
ghter by the wife. But excuses of this kind are
confined to the relation of husband & wife as
neither a child or servant can be excused for
doing an act by the command of the parent
or master, & no other excuse can subsist in
that called duress, common sense dictates him
or else it is treason — Thus a subject taken

1 Hawk
c 3
s 8
s 4

4 Bl. 180 — 1 Hawk 60 — 1 Hawk 60-1 — 1 Hale 457 — 4 Bl. 181 — 1 Hawk 59-1 — 1 Hawk 59-2

1. prisoner may be compelled to arise as in arrest. or be committed & kept in custody
So the same cannot be said of a private
Hale person's presence & not on the natural presence
60-1 since no one has a right to kill an innocent
Hawk person even in self defence.

5 Obstruction, resistance, or combustion
1 where an officer in suppressing riots &
Hale breaches of the peace cannot do his duty without
57 doing violence & the persons & the rioters
4 Bl. & the law will uphold & excuse him in using
81 whatever force is necessary to suppress riots
where resistance is made. The acts of the officer
are considered as the acts of the law — he is not
to regard the quantity of violence but only the in-
strument with which it is done.

A question may arise how much money extent a man has a right
4 Bl. to steal lest to prevent his starving. By the
181 Civil Law no such necessity will ever excuse
1 Hawk or justify stealing — Indeed there would seem
59-2 to be some obscurity for the Com Law
always makes provision to the best of human
power against such necessity.

Civil or mere person may be concerned
in the commission of a criminal act, yet
there may be different degrees of guilt in

the persons concerned the law has Public Crimes
established two kinds of offences - viz principal
and accessory. The principal is of two kinds
also viz of the first and of the second degree — 4 Bl. C.
A principal of the first degree is he who is the 84
actual perpetrator of the crime. A princi- 1 Hale
pal of the second degree is he who is present 615
aiding & abetting the actual perpetration thereof.
Elementary writers do not seem to be all agreed 97
in this distinction but it seems to be agreed that 2 Hawk.
this distinction is not material - But the 441
distinction between principal & accessory is 258-326
a may be very material. Formerly he who being present Doug.
aided & abetted the perpetration was considered 197
as an accessory only but he is now considered 2 Hawk.
as a principal of the second degree. It is es- 523
sential to constitute the offence of the prin- 1 Hale
cipal of the first degree that he be present 43,
It need not however be an actual presence
or handling by - but a mere constructive pre- Foster
sence or mutual aid seems sufficient — 350
nor need he be within sight or hearing of the Doug.
actual perpetrator — Thus if one stand at the 197
side of the house watching while the other is inside a 2 Hawk.
murdering — or if one is one side of the house 539
and the other on the other side - in such case
he that watches in either case is considered as principal

accessories and of course a principal of the second
degree – and to be the one thing or the other
principal of the second degree it is not ne-
cessary that the actual perpetration should
be premeditated or even known. He may be pre-
sent aiding, assisting the principal of the
first degree merely. These distinctions are
as well in felonies created by statute as
at com. law. But even a constructive
presence is not always necessary to con-
stitute a principle of the second nor indeed of
the first degree. Thus if one prepares poison
& mixes it with the food of another person of
the eating it dies – he is a principal of the first
degree – so if one lays a trap or digs a pitfall
with an intent to destroy another life he is
a principal of the first degree.
But it is indispensibly necessary to constitute
a principal of the second degree that he
be aiding & abetting the actual perpetration
and hence it is if the verdict of the jury find
the offender innocent only – no one can be
rendered because he may have been present
& still an innocent person
An accessory is one who is not the chief actor
in the perpetration nor present at the time
but one who is in some way concerned therein

either before or after the act. 1 Hale P.C. 615
is undispensably necessary to a principal of
the second degree that he be present so it is
indispensably necessary to an accessory that
he be not present - for if he were present he 1 Hale
would be a principal of the second degree 615
There are some offences which do not admit 12 Co. Rep.
of the distinction of principal & accessory - 81-2
In general there may be principal & access- 1 Hawk.
ory in all felonies. In high treason the atro- 37
city of the crime will not admit of principal 4 Bl. C.
& accessary but all that are concerned in it 35
are principals - Nay the very intent to kill 1 Hawk.
the King is high treason & constitutes a crime 38
of the first degree - but there must always be
some overt act before an intent of this kind 1 Hawk. 40
can be punished. It is a general rule that 12 Co. Rep.
whatever will make an accessory in felony 81-2
will regularly make a principal in high Dyer
treason. This rule however does not extend 296
accessary after the act. In petit treason mur- 1 Hawk.
der & all premeditated felonies there may be 441
principal & accessary - But under the crime 4 Bl. C.
of felony there can be no accessories. In mur- 36-191
premeditated felonies there may be accessories 1 Hale
after the fact. It is a maxim in criminal law that 615
guilt of the accessory must follow that of the principal

The law will not stoop to discriminate between principal & accessory in petit Larceny

Accessories and thereto the maximum of the ac-
Black cessory can not be greater than that of the
152 principal. Thus to a servant killing his master
Black in petit treason — but if he instigates another
145 person to kill his master the actual perpe-
trator is guilty of murder only & the servant
accessory cannot be prosecuted until the latter
have been tried and convicted of murder as in-
Black dicted.

145 Accessories are of two kinds viz accessories
read before the fact & accessories after the fact
151 an accessory before the fact is one who procures
procures, counsels or commands another to commit a
145 crime himself being absent when the act is
done. If one adds another in the com-
Read mission of an unlawful act is accessory
H. 35 & all that ensue upon the commission of
Lit. that act. Thus if A commands B to beat C
Sir & B in beating kills him — A is accessory to it — &
Hale if A commands B to poison C & B does accor-
87 dingly & C dies — A is accessory to it. In the pun-
Black ishment of accessories one rule very observed is necessary
Hale that crimes should ordinarily have been consi-
Easter dered. It seems however in modern times the
Doctrine of mitigation admits of commutation in
Lilly & the offender is liable to punishment the same
15, 7 — 2 Show 1 — 6 Mod 101 — If one retracts after

having excited another to commit Public Wrongs
a crime & then the crime is committed
he is not accessory to the crime — because the
act is not done in pursuance of his intimated
final command — & if the act is not done at
all he cannot possibly be an accessory. But 1 Hawk
in either case he is guilty of a misdemeanor. 2 1756
or — for this offence was complete before he re-called
the act & an offence once complete can never 4 495
be palliated or extenuated afterwards by this 1 Foster
Lenders. after the command is given & before 334
the unlawful act is done the law hath on
the ground of policy & justice given a locus
penitentiæ before the die is cast. Felonies
created by statute as well as those at Com Law Leach
admit of accessories & principals altho the 64
statute is silent in regard to accessor- 1 Hawk
ries — & in general that Felonies have all the 1 64
incidents of Com. Law Felonies.
The bare concealing of an intended felony does 1 Hawk
not make one an accessory but is a misprision 447
of felony — a misdemeanor and punishable 4 136
as such — Indeed the concealing of an intended
felony does not come within the description 12
of an accessory. and it is a general rule that
all persons who are present at the time of the
commission of an unlawful act & do not en

Accessories deemed all in their power to prevent the act are guilty of a misdemeanor. The law does not require impossibilities & a man is not bound to expose himself to imminent danger of bodily harm to prevent such act
Hawk & if a man is not in the opinion of the jury
442 competent to prevent the commission of a fel
115-6 he is excused & in the case of infants they are excused tho they are competent — because it would be an offence of omission

Thus far as to accessories before the fact — An accessory after the fact is one who receives relieves comforts & assists a felon knowing him to be such. This rule if true to the full extent would include many cases not accessories — a common act of charity — as the
Hawk giving one food to prevent his starving or clothing
448 or indeed receiving him into his house if prov-
204-205 ed public, proofs against him be not hin-
Kelyng dered are always justifiable. But if one by any
45-47 act prevents public justice from being executed
1 Hale on a felon — as by furnishing him with the
88 means of escape or concealment he is deem-
ed an accessory after the fact. The same is the case if one furnishes a felon or other prisoner with instruments by which to execute from prison. Buying or receiving stolen goods

did not at Com Law make one an Public Wrongs
accessory, for it could not come under the 4 Bl. C.
terms receiving comfort assistance felony 88
& was only a misdemeanor — but by the 2 Hawk
stat 5 & 6 Edw. VI. c. 16 the offence of receiving 4 C.
or buying stolen goods knowing them to be 130. 2.
such makes one an accessory to the felony 855
after the fact. The stat. of Com. makes such per- Hyde
on a principal & not an accessory. To make 485
an accessory after the fact it is necessary that stat. Com.
the felony be complete before the assistance begins. 1 Hale Proc
Thus if one inflicts a mortal wound and another 2 Hawk
before the death of the person & after the fact as- 451
sists the delinquent — the assistant is no accessory 1 Hale
to the homicide. A married woman may be 219-622
excused for assisting her husband & so can be but
this indulgence is not extended to any other 2 Hawk
civil or natural relation not even to the 451
husband & assistant the wife. This rule is founded 1 Hawk
on the coercion of the husband to which the 4
law always supposes the wife to be subject & 4 Bl. C
not on the relation of husband & wife. If one is 38-9
indicted & alledge in the indictment to be ac- 2 Hawk
cessory to two principals — proof that he assisted 540-2
or was accessory to — one principal is sufficient & vide
to support the indictment. But says Mc Gould 119
tho this is settled to be law yet I doubt it. The

Accessories principle upon which the rule is founded

4 Bl. C. 89. It seems to be relaxing against the offender the strict principles of construction.

2 Hawk. 455-6 Leach 18 2 Bl. C. 40-323-4 2 Hawk. 452-3 Leach 19-25 2 Hawk. 452 2 Leach 119

It is a general rule of the Com Law that accessories are to suffer the same punishment as their principals. But as to accessories after the fact they are allowed the benefit of the clergy. By the statute 4 & 5 Ph. & Mar. the accessory could not be tried till after the principal was attainted unless he were tried at the same time with the principal - But the Statute 1 Anne Stat. 1 c. 9 s. 3 & 4 Geo. 2 c. 11 s. 1 & Blackstone say clearly that they may be indicted as accessories before the principal is attainted - but says also that this is incorrect the fact is they may be indicted as principals ~~or~~ for a misdemeanor before the principals are attainted of felony.

If the principal is tried & acquitted the accessory must of course be discharged - The guilt of the accessory arises from receiving & relieving the felon & not the felony. But tho the death of the principal before attainder discharges the accessory yet the accessory cannot avail himself of the death or pardon of the principal after he is attainted - It is not specified by the Statute

that the principal be actually guilty - Public Wrongs
ithed in order to subject the accessory to it, it is
essential that the principal guilty, for on the no principle
contemplation of law he is not guilty unless till he
is attainted. It has been observed that if Com. L
the death of the principal after conviction and
before attainder (if) before judgment rendered 4 Bl.
discharges the accessory & the reason is because 385
the verdict whereby the principal is convicted & Hawk
cannot be given in evidence till judgment 2.55
is passed thereon (if) till he is attainted. But Law
the Com Law has been altered by the stat. 5 Anne 16
which if the accessory is then acquitted allows & Hawk
him to be indicted as principal in the felony or 5.20
misdemeanor. If one be acquitted upon having
an indictment as principal he may in a 2.56
subsequent indictment be found guilty as an 4 Bl.
accessory after the fact - but whether he can be 40
indicted as an accessory before the fact or not Foster
seems to be matter of doubt. But says M. Gordo 361
I could never see any reason for doubt on that Hawk
subject - for counselling - advising &c is one more 5.20
the actual commission than the giving com- & Hawk
fort & relief. That the is not guilty as principal Hawk
is no proof that he is not guilty as accessory unless
it is necessary to state in the indictment against 4 Bl. 4
an accessory that the principal has been convicted

felonies without stating that he has been attainted
Forte. for the felon may be indicted before judgment is
665 given but cannot be tried before he is attainted
Hawk. Neither is it necessary to state that the principal
466-n committed the act for which he was convicted
Forte. tho the principal is attainted & executed yet
121-865 may the accessory controvert both the facts &
Mac. the law upon which his principal was con-
464-5 victed. — The record of the proceedings against
Cooke the principal are not conclusive against the
118 accessory. The same indulgence is extended
Mac. to the accessory when he is tried with the
463-4 principal.

Thus far as to crimes & misdemeanors in general
& of Felonies — the term includes a
vast class of offences — and is according to
the original acceptation or signification of
the word any offence occasioning a forfeit-
ure of goods or lands or both. The term
felony did not originally denote any offence
Hawk. or crime but only the penal consequences of
64-5 certain crimes & hence the different opinions of the
Staund. writers — whatever occasioned a forfeiture of
15 lands or goods was a felony — Hence arises
Hawk. a difficulty in according to general usage accurately
64-5-8 it is not clear what crimes are in modern times
called felonies & therefore what is called felony

Felonies treason are considered ~~capital~~ and there-
Vide. fore it a stat. may create a new felony — & enact
Qes that it shall be capital & yet not a treason in
the true constitutional sense — that must be
determined with due regard to the precise pro-
visions in the statute. In other words, if the stat.
prohibits an act & calls the commission of the
act felony, it is enacted that it shall be punished
Vide capitally. But if the stat. prohibits an act
Qes under the penalty of a forfeiture of all the of-
fender's property — the crime is not felony but
Vide only a misdemeanor — nor is it punished with
death. Crimes which in England are denom-
inated felonies — or such as are attended with for-
feiture of property — are in this state also
denominated felony tho no forfeiture does
accrue. And the Legislature with the provi-
sions of the Com. Law as a guide — but have
a definite mode of punishment specifically
Vide prescribed & carried into execution. Briefly
Qes in England there is a species of punishment called
Qes benefit of clergy — which exempts delinquents
Vide from the punishment prescribed
Qes in their statutes. This punishment therefore
Vide does not prevail here — & the reason
Qes is because we have no clergy to plead the
benefit — & the benefit of clergy is pro-

at all must always be prayed before Public Wrongs
judgment — & it may often be prayed & is reg-
ularly prayed after conviction.
It cannot be necessary I hope I could not use-
ful & apprehend to detail at length all the
particulars relating to the Benefit of Clergy &
the offences called clergyable offences — because
no part of the subject is applicable to this
State nor to any other State in the Union as
I have heard. It is sufficient to give a short
sketch of its origin and progress. The acco-
dency of the Pope & Rome was ancient over
the people & government of England — that
he as an ecclesiastical & spiritual person claim-
ed the right & punishing all his clergy or
clerks in orders. Temporal courts as he claimed
had no jurisdiction over that class of people — but
they were liable to punishment only before an ec-
clesiastical court. However it seems that the
courts of Com. Law in Eng. would not give up the
right of punishing the most atrocious crimes
such as were made in 25 Edw. III — for the Com. law would
then allow the inflicting of punishment upon 4 Bl. C.
foreigners that were officers under the Pope for such crimes — since would they 366-374
give up the right of punishing below felony. Thus
the benefit of Clergy is allowed in cases of petty lar-
ceny or misdemeanors — it seems that convictions

Benefit of Clergy from punishment was once confined
to Laick except in capital offences. But ex mobili ye
439 Clergy was certainly allowed originally by the
Stat 25 Edward 3. when the clergy was multiplied
so that it was difficult to distinguish
the people & the learning was chiefly confined
to the clergy at that time this statute gave
442 was intended to all those who could read Latin
like a Christian was called to answer for murder
3 Inst 59 & other wise as age accustomed. But by the
Statutes 4 & 5 P. & M. 4 Edward 6 & divers
other statutes & made & made indistinguishable
in all clergyable offences - & this whether they
could read or not. This difference however
still continued & exists at this day - that common
clergymen when convicted of a clergyable of-
fence & pleads their advantage of the benefit
of clergy are to be burnt in the hand - or de
448 & C whilst if imprisoned & fined or sent to the
453 Gallery - or some other inferior punishment
altered & was a commutation - But clergymen
454 peers & Lords are entitled to the benefit of
Clergy in all clergyable offences without any
456 burning or commutation of punishment
This was decided in the great question of the
Lords right to sit in Parliament on their
trials on the difference is that no one

are intitled to the benefit of clergy only Publick Wrongs
once — so it is with Rapes & Beerfires — but the 1 Hale
latter or clerks in orders are intitled to it as often 215
as they commit clergyable offences. 1 H.P.C.
The benefit of clergy when once prayed & granted 219
amounts to a pardon not only for the offence 21
for which it is prayed but for all clergyable of- 2 Hale
fences before that time committed. Benefit of 330
clergy is allowed in all felonies unless expres- 4 Bl. C.
ly taken away by stat. — This privilege of the 352
clergy was formerly specially pleaded by an
indictment and called a declinatory plea
but this practice has now gone out of use
because as the offender was allowed to take ad- 2 Hale
vantage of this privilege after conviction in all 288
cases where he could before conviction & as he 4 Bl. C
might be acquitted for other matter — not being 352
allowed to take advantage of this privilege twice
it was found extremely disadvantageous &
so was discontinued.
Thus as to that wide class of offences denominated
felonies. — This class of offences which for-
merly included under that of felonies is called

Homicide

and is the term denoting the killing of any human 188
creature — or literally man killing. of Homicide 189
there are three kinds — viz Justifiable, excusable & felonious

Homicide - Justifiable homicide consists in the
fact killing of a human creature but under
such circumstances that the law annexes
no degree of guilt to the act of killing - & hence
it is not necessarily a crime punishable by law -
justifiable homicide is of several kinds
first where it occasioned by necessity - as
where a sheriff executes the sentence of the
court - he acts in obedience to & carrying
the law into execution - he commits no crime
nor is guilty of culpable homicide. Such & con-
stitute a justifiable homicide, for this kind
the law in fact actually requires it to be done
& not only this but strongly urges it to be done
from a sense of duty. which in law is the same
as one enacted per alium facit per se - The ex-
ample the bills a man that is actually attainted
may be guilty of murder as the case may be
for he does not act under the command of
the law if he does it otherwise than the law
requires - as if an attainted bill another
but if attainted he is deemed guilty of murder
The bill of offices must clearly also in the case
stated are specified by law - he must in doing it
pursue the directions of the law - otherwise
he acts unlawfully and is guilty - this is the court

of things breach made in, more dire in any Public Highway
of the place where they are. The offence is Public
punishable and further proportion of ex- 201
amining the offence in according as more the 1 Hale C
circumstances must have been judged by a court 470
of competent jurisdiction. Attempts with intent
to carry off or offer the judges who passed the
sentence are guilty of murder. - for the stone
which struck and drawn was public. But not
if the jury find an offence & the court having Hawk
cognizance of the offence) pass such a judgment 105-130
direct such punishment as is not by law 1 Hale C
annexed to the offence found - (as if where Death) 188
the judge only & not the offenders heir is are guil-
ty of murder — for the penalty (the court having
a right to pass such judgment) is bound by Hawk
the maintenance of the court — Then if the jury 136
upon an indictment for a breach of the peace on-ex.
ly find the defendant guilty - & the court pass 98
judgment of death upon him the judges 3 Bac
are liable as murderers but the Sheriff ex- 674
cused

Secondly Homicide is justifiable in certain Hawk
cases when committed for the advancement 2-3
of public justice - as if an officer in arresting 1 Hale
one in pursuance of a civil or criminal, pro- 69
cess is assaulted or resisted he may lawfully kill

Homicide – or the act of a person causing the death of another person by unlawful means – shall be punished by death or by imprisonment for life or for a term of not less than ten years, and if the offender is a person who has previously been convicted of homicide or of any other offence involving violence against the person, he shall be liable to imprisonment for life.

Where a person is charged with homicide and it appears to the court that he was provoked to lose his self-control by the conduct of the deceased person towards him or towards a person for whom he was responsible, and that he killed the deceased person as a result of that loss of self-control, the court may, if it considers it just to do so, reduce the offence to manslaughter.

Where a person is charged with homicide and it appears to the court that he was suffering from a mental disorder at the time of the offence, the court may, if it considers it just to do so, reduce the offence to manslaughter.

Where a person is charged with homicide and it appears to the court that he was suffering from a mental disorder at the time of the offence, the court may, if it considers it just to do so, reduce the offence to manslaughter.

and where the offence are under Public Wrongs
the authority of the law the case is the same Foster
whether the offence be a civil or criminal. So 272
also the officer to prevent one from escaping from 273
prison – will be justified in killing if 274
necessary either the person escaping or the re- 4th
ceiver. 494

Thirdly homicide is justifiable when done to Macd
prevent any heinous atrocious crime 566
And the general rule is that where a crime Foster
in itself capital is endeavoured to be commit- 293-4
ted by force it is lawful & injoined that force 271-5
by the death of the party attempting. Thus killing
if one attempts to kill another a third person 137
as well as the one attacked may be justified 1 Hawk
killing the assailant. But this rule applies 108-9
only to cases where the crime attempted to be 4 Bl. C
done – is attempted with actual force – & not 180
as in many cases where it was deemed to be done with 1 Hal
force – Thus a libel is in law deemed to be done 485-6
with force but no one will be justified in kil-
ling a man to prevent a libel – Neither has
a man a right to kill one who attempts to
pick his pocket – or trespass upon his land
or break open windows in the day time – But
if he does it is only guilty of manslaughter &
not of murder – & in such cases the property is to lead matter in point mem

Homicide It a forcible attempt is made upon the
Killed person of another - tho not with an intent to kill
180 or commit a capital offence & the person so as-
Foster sailed kills his assailant - it is homicide de de-
273 -fendendo & excusable but not justifiable. So
1 Hawk woman may lawfully use any degree of force
180 & resist or prevent a violation of her chast. &
The books lay it down as a rule that the hus-
Foster band or a parent may do the same to resist
274 any like attempt when the wife or child. But says
the learned writer we know not for what reason the rule
holding it to hold alone. The fact is not only the hus-
181 band or parent are justifiable in such case but
1 Hawk any other person - a stranger - If the rule is
108 - any consequence it is where the attempt upon
1 Hale the wife or child is not capital & in that
458 case the husband or parent is excusable for
killing the assailant as in self defence - while
a stranger would not be excused. & we see perhaps
the situation of the husband or parent is more
eligible.

It seems to have been the old opinion that
a justification could be specially pleaded
1 Hawk to an indictment - but as the laws now it
108 seems not pleaded but may be given in evi-
1 Hale dence under the general issue - as it would be
478 a denial of all the material allegations of

precedly preceded it would be committed in any
evil or unjust thing & the general issue
and it seems agreed also that no mere ill-
will can be considered except in the commission of
that is not the universal opinion but it seems public
& the better opinion. It is supposed by the
Romans that unjustifiable act is not pun-
ished at all

Homicide is the second kind of homicide-
al Excusable — which tho it differed anciently
in point of guilt & punishment from justi-
fiable homicide differs now in a very small
degree — or only nominally — & has no guilt or
punishment attached to it. The true & specific
difference between them is that one is lawful is
the act & the other is evil
Excusable homicide is of two kinds viz
first homicide per infortunium — or by mis-
adventure & secondly homicide se defendendo —
de — se defendendo which is voluntary & done
with malice & under circumstances which
in law constitute an excuse.
Homicide by misadventure is where one
doing a lawful act — without intention & do-
ing every precaution — accidentally kills another — the
party killed is active — he & one other are
about to ordinary training & the head of which the

Homicide - kills one another by — A throws a
stone & wounds B who dies in a year & a day — the case
is same as if B had died instantly — the case com-
mitted homicide by misadventure & the one who
killed the horse is guilty of manslaughter
However says Mr Gould the civil case is often just
Entd by way of example - I do not see on the wider
case any thing to do with the killing — the
killing here is supposed to be the instrument that
did — Mr Evans thinks that the case
stands similarly the same as one who in
both another by pushing the last accidentally
this person accidentally caused his death
the person in the boat had no agency in vo-
luntarily in his death at all. — Fine cut
in strings which — the death was occasioned
must satisfy it would be unjust the
homicide excused. Chance medley may not
strictly comport in criminal death entered &
is excusable — or manslaughter — a felon in pri-
is criminal in law — a felon in pri-
Entd son &c — the rule is stated thus may be vio-
lence proceed & necessity justify homicide — But if
stated the punishment is retrospective the circum-
stances exceed all measure of reason — a if done
with an instrument apparently endangering
life & manslaughter or murder as the case may

For such circumstances will arise — Public Hymns
have made a proper exception to the general Rule
stated & will, as appears, sometimes dictate Helen
more of this & myself with a Bow & Arrow 64-5
he did it would the murder, since the
act was one which the death accidentally ensued
in consequence of the action — if guilty of
manslaughter or murder — either malice in
this case is evidence sufficient, unless 4 Bac
but not to these malicious — & Stink says 47
this point very correctly — In all the cases
of ~~accidental homicide~~ manslaughter will
be found of that kind — Thus the exportation of wool
from England is malum prohibitum & not a nat-
ural positive crime — wherefore if one in endea-
vouring to export it should with a sack of wool Foste
knock down a man & mature his skull so that he 258
die — the crime would be the same as if doing a lau-
ful act — But if the unlawful act were treason Helen
death ensuing upon that act accidentally is man- 14
slaughter — & if the unlawful act were a felony Hale
the accidental death of a person in consequence 134
thereof would be murder. Thus if a man in shoot- 1 Hawk
ing his neighbours horse should accidentally kill 112
the owner or any other person the crime would be
manslaughter — But if he in shooting his neighbours
dog will kill with a felonious will & that it

Homicide – by accident & the reverse The common
murder. If a man with an unlawful & mali-
cious intent to hurt another or do him bodily
Hawk harm – or beating him that he die – it is not homi-
112 cide by misadventure but murder – because the
Hale act of beating or the doing other bodily harm tend-
80 ing to destroy life – for a very small degree of viole-
175 nce will often terminate ultimately in the death of
Kelyng another – it may reasonably enough be presumed
47 against the doer that it was done with such
malice express or implied as the law requires
Hale to the homicide express upon which malice
481 which must all find & establish – it is not ex-
Foste- cuse enough – & the case is the same if the cart were
rew 260 not quite over – or the gallows a little higher or
Hawk the cord a little less. But if death accidentally happens
112 in consequence of a due correction either of a
Kelyng parent or master of a proper child or servant or
47 else of some immoderate correction not inspired
180 by any the causes above mentioned it is murder
1 Hawk 84-5 Homicide in self-defence – is where one is
Kelyng assaulted & forced to kill the assailant in his own
128 defence – This also is a species of homicide
Foste- excusable but not justifiable. To constitute excu-
rew sable homicide-in-self-defence it must appear
1 Hawk that the killing of his assailant was the only pro-
84 bable means of preserving life or escaping great
1 5 bodily harm – The word probable as well as probable

means of escaping &c is used in the Public Wrongs
books - but says the Court it seems to me incorrect
if homicide is necessary in the absence of sudden
death it is justifiable & a fortiori it is excusable.
It is not to be understood that a man must
kill his adversary every time he is assaulted - it
must also appear that great bodily harm was in-
tended & would otherwise have been inflicted
Thus if the assailant is a weak man & has no in-
strument by which he can take advantage of his
adversary who is a strong man - the latter can
in no manner be excused for killing the former
The law shows a degree of indulgence to the judg-
ment of the slayer in this respect - It is not ex-
pected that he can deliberate with a great deal
of accuracy or correctness - He can however never
be excused on the principle of having inflict-
-ed justice - this must be left for the law to do Foster
It is many times difficult says Mr Gould to distin- 273
guish between what the law terms manslaughter & Kelyng
one degree of excusable homicide - But the true 57
criterion between them seems to be this - when 1 Hale
both parties are actually fighting or combating 18
at the time when the mortal stroke is given the 4 Bl. C.
slayer is then guilty of manslaughter. But if the 184
slayer had first begun the fight or having given an
adversary a deadly stroke afterwards

Homicide – being deadly practice by two antagonists both
5 the one having a previous intention – but in pursu-
ance of which he will be excused, this rule says
I have, he should in the present heat & battle & accord-
ing are – but if upon a sudden quarrel & two fight upon
it are strangers in waiting – and upon meeting they
10 are at it in the market-place even if the aforesaid
being killed his antagonist – & according to some opinions
5-6 it is immaterial in such case whether the ag-
gressant or his antagonist is killed – but says
7-8 Ld Hold & take it to be more settled that the party
15 who aforesaid can never be excused for killing his
former antagonist during the affray, & also if the
18 aforesaid with malice prepense aforesaid con-
20 trive with an intention & kill them – and
being upon finding his antagonist superior in strength
5 & tried to decline the combat & finding it impos-
12-13 sible to do the same – he in gratitude of murder
former & two persons agree & go home to his dwel-
23-1 ling-house & one finding the other upon
12 or his own life in danger – it is murder for
former endeavoured to decline the combat – & this on the
48 ground of malice prepense – otherwise
49 might & ought another friend to kill him or
being unable must be excused if he could
29 otherwise – in such case each has a premeditated
31 deliberate purpose formed to do other bodily harm

[illegible] [illegible] [illegible] [

Homicide - under the same circumstances and on
2 Hal. P.C. the same grounds as the person attacked may
481 slay in his defence - Even a stranger may
Fitz. interfere in all these cases when a certain
455 plea is alleged & be entitled to recover
Co Litt. damages to prevent mayhem. The killing of a
457 person who attempts to commit a murder - Even against the most atrocious
criminal is not justifiable if not necessary for it - And the person must flee if possible in attempting any arrest & slay directly if the same cannot be done otherwise
1 Hale for the officer can by no means justify killing
494 the person if flight is not.
1 Hale Malice & deliberate intention distinguish murder
455-6 from unlawful homicide. If in an affray
1 Hawk. will that another's death can be averted
235 otherwise - it will not be justifiable or excusable
2 Inst. homicide. It is said by Lord Coke
318-319 that excusable homicide was anciently punished with death. - But this has by later writers
1 Hawk been denied - The authorities which Lord Coke cites
114 do by no means support this idea. - I trust
1 Hale they will be found to have been the case
425 at Com. Law - & so says Lofft and Hawkins. Not
Fitz. is known that at Com. Law it was necessary to
282 2 Hale. 88 in certain [illegible] of cases to retire

But a pardon & writ of restitution Public Wrongs
was as of course granted so that there was no
actual forfeiture. Of late however it has become
the practice in such case to direct the jury to
bring in a verdict of acquittal - & I am inclined
to think with Mr Gould that Foster was the
judge who first introduced this practice - It was
not I think known until I directed the jury to bring in a
verdict of acquittal & they did so accordingly. But why is
it says Mr Gould that any punishment or guilt H.P.C.
should ever have been attached to this crime if 1 H.
it is excusable - this term seems to preclude the 115
idea of guilt - & in those days Mr Gould tried the
only sense in which it can be considered as prop- 114
erly used is - that the slayer shall be exempt 1 Hawk
from the punishment annexed generally to man- 447
slaughter & misadventure - If a total forfeiture Foster
& property ensued upon conviction it would 288
come under the denomination of felonies & felo
se it seems to have been anciently called - 95
but as there is no forfeiture now - it is not a 1 Hawk
felony - the offender is more strictly pun- 115
ished by pardon & restitution of goods - & of late Foster
the Judge directs a general verdict of acquittal 288
In excusable homicide there are no accessories 2 Hawk
because it is no felony. 1 Hale - 615 - 447
This law as to justifiable & excusable homicide

Homicide – *Felonious homicide* is the killing any human creature without justification or excuse
4 Bl. C. 189 – may either be the destroying of one's own life or that of another.

Self-murderers is in law termed a felo de se
2 Hawk 102-3 in common parlance or suicide. A felo de se is one who deliberately puts an end to his own life – or commits any unlawful malicious act the immediate consequence of which is his own death: If one requests another to kill him
1 Hawk 130 & he does it the former is not a felo de se but the latter is a murderer because the request is void. Any person to be a felo de se must have
1 Hawk 411-2 been of sound discretion – compos mentis &c
4 Bl. C. 189 Therefore delects lunatics &c cannot be felo de se.
There is no legal fault in their acts. Felo de se admits of accessories before the fact only as if one persuades another to take his own life.
It is not strictly proper to say that self-murder is attended with any legal consequence whatever is done to the body after he is dead is no punishment at all for the purpose of deterring others from the commission of a like act
1 Hale 412 the stat. of Corn. requires that they should have an ignominious burial – in the highway
Hawk 88 be impaled &c. & all his goods forfeited. His
108 lands are not forfeited because there was no attainder

In all the cases cited the Court & which Public Wrongs have come within my knowledge in this State the jury have universally returned a verdict of insanity - taking for granted as Blackstone & others have that they must necessarily have been insane to commit such crime (note Black. 'for none does wickedly but he who is mad or wanting' - & verdict found of this kind saves their property from forfeiture 24 because if he were insane he was no felo de se. 259 Court says the goods if one should be presented 4 Bl.C as a felo de se - & a verdict of felo de se returned 190- & know nothing to prevent a forfeiture of prop- 857 erty in this State as well as in England.

The next species of felonious homicide is that of killing another man without justification or excuse & is either with or without malice voluntary or involuntary. The circumstances with or without malice create two divisions the one called Manslaughter - the other Murder - 4 Bl. Com - the specific difference between them being 190-9 that the former is without malice in fact - 1 Hawk ment of law & the latter with malice. - Malice 115 in law differs in signification from malice as Foster used in common conversation - Malice in law 256 is not - spite & malevolence - but it is any unlawful or wicked motive indicative of a depraved & malignant heart.

Homicide – Manslaughter is the unlawful kill-
1 Hale ing of another person with malice either
742 express or implied – & may be either voluntary
+ 191 & involuntary – (ii) intentional or unin-
191 tentional. Manslaughter admits of no ac-
cessories before the fact – because the act is
Hawk unpremeditated. but there may
15 be accessories after the fact as well in this as in any
other crime.

As to involuntary manslaughter if two persons
Foster upon a sudden quarrel fight & one kills the
297 other – it is manslaughter of the voluntary kind
Keling and so it is if upon a challenge on one side and
115 acceptance on the other – they go aside immed-
134-5 iately & one by fighting kills the other. but if
Hawk after the challenge & acceptance sufficient time
137-5 intervene for the passions to subside it is then
2 Hawk murder. If upon a sudden quarrel or fight a
463-8 third person attempts to part the combatants &
1 Hawk is killed in the attempt – it is murder if the party
127-8 killing knew or was informed for what purpose he in-
Foster terfered – if he did not know his object it is man-
272-310 slaughter. Every man has a right & present
Keling may it is his duty to prevent if possible all vio-
66-7 lence of this kind. – And where the parties were
114-5 attempting to kill each other the crime of killing
a third person would be the same as killing another

If a person is greatly provoked by an- Public Wrongs
other misconduct as by pulling a man by the killing
his nose & striking in his face - & immediately 105-6
kills him - the killing is murder & not 1 Hale
manslaughter - but if sufficient time hath elapsed 470
for the passions to subside it is murder - & conclu- 1 Hawk
sive murder it is indispensibly necessary that 125
there be malice aforethought or malice present Foster
or what Blackstone calls a set, deliberate purpose. 294-5
& ill. But tho it is true in general that if one 316
be provoked by some great injury & shall kill him
who excites this provocation the crime is only 1 Hale
manslaughter - yet this is not universal for 454-473-4
if the manner of executing his revenge mani- Kelyng
fest a set deliberate purpose of killing - it will 3
be murder tho done immediately and in the 1 Hawk
heat of passion. as where the keeper of the Park 126
found a boy stealing wood in the park - & tied him Kelyng
to a horse's tail & set the horse a running so that 137
the boy was killed - it was held to be murder & not 1 Hale
manslaughter. If a man finds another in the 486
act of adultery with his wife & kills him on the Kay.
spot - it is not murder but manslaughter. But 212
tho it is not murder for one under the impulse 4 Bl. C.
of strong passions provoked by the misconduct of the 191-2
other - to kill him - yet bare words however insult-
ing contumelious or provoking - or opprobrious gestures

Homicide — a breacher of engagement — a treason in
in blood — are never sufficient to make the
Blc. crime of killing to be Thom murder. Whether
200 it the manner in which the instrument
Hawk with which it is done manifestly endangered
124-5 his life — But if he undertakes to inflict moderate
Keling chastisement or retaliation & intends nothing
1861 more & death accidentally ensues the crime
Foster is nothing more than manslaughter. If it
311 had been done in heat & anger without deliberation or design to injury between 4 & 8 — the
55-60-4 friends of the parties interfere & kill B
151 it is only manslaughter — This rule may
12 Coke the Court is laid down too generally — & must
5 qualifying — The fact is if he interposes & de-
Foster fence or protect A & accidentally occasions
315 the death of B it is manslaughter only but if
the manner of interposing & defending is such
as manifests an intention to kill it is murder
Where domestic civil or natural relations
interpose in mutual defence in a sud-
Blc. den quarrel — homicide may be excusable
172 in self-defence for it arises from an affrayer
154 necessity — but where there is no necessity & then
is the occasioned by a sudden act of revenge
it is manslaughter.

6 Bl 200 Involuntary manslaughter — This is the

term denotes it unintentional homicide. Public Wrongs
but differs from homicide by misadventure Coop.
in its ensuing upon an unlawful act which 850
amounts in it - whereas homicide by mis- Foster
adventure arises upon a lawful act 258
act merely malum prohibitum - so if one 261
occasions the death of another by an act 4 Bl. C
malum prohibitum - the rule is the same as 192
if the act were lawful & the party not unskilful
either but homicide by misadventure. Hurr 554
if a person be unqualified to kill game & in 4 Bac
shooting at game kills a person it is only 250
homicide by misadventure. & tenant at will 1 Hale
devises over to such upon the accidentally kills 4 Bac 2-3
another it is Murder. But the homicide Foster
accidentally arising upon an unlawful act is in 261-262
general considered as misadventure yet if the act 4 Bl. 182
be unlawful per se - abstractly considered - be done in an unlawful
unlawful manner & death accidentally ensue. it
is manslaughter. Thus if one upon a building erected
in a city throw down stones or stone into the 181
street where people are continually passing - & by
casualty a man slaughter even tho he cried out 268
watch-ware as in the vulgar way Stand under - & if one killing
discharge a gun in a place of common resort 40
& another be killed thereby accidentally - it is manslaughter Hale
tit - tho the discharging a gun is unlawful per se because 192

Homicide – but the involuntary homicide [illegible] un-
2 Hal. 315 an unlawful act is manslaughter in general
1 Hawk 82 and it is not to be understood of that, that in relation
1 Hale 466 to which upon every unlawful act is but man-
2 Inst slaughter – & the unlawful act is nothing more
Hawk than as will subject a man to homicide en-
82 tire as unlawful act is manslaughter only but
being of the unlawful act is a felony – then the killing
111–114 is murder.

Hale a manslaughter is a felony – but being a clergyable
461 offence is not capital in the first instance
Blood. but the offender forfeits all his goods & chattels
457 (& no land) & by way of commutation is burn-
2 Hawk. ed in the hand

195–201 & the manner of allowing the benefit of cler-
387 gy – praying the ordinary or Bishop (when one of
the clergy were indicted) demanded if clerk
of the king's court – & if record said it was of
course entered & the privilege. this proceeded
from time till the 4th of [illegible] was enacted
that all persons clerks or not were accounted
in all clergyable offence allowed the benefit
of clergy without any could read or not. except
once happened in the case of treason but by
a beyond which felons was delivered where
upon the conviction of a man in manslaughter
the benefit of clergy was prayed & the prisoner

the Bishop standing by— a line in Public Prayers
some ancient latin author used but by him
to read & translate— Upon his not reading
Godly Feeling a displeasing himself to the Bish-
op— (as is usual on such occasions) said to him
Light ye not light— Towards the Bishop & their Light
The Chief Justice said to the Bishop Begone out of
Court & if ever you come in again with such a claim you shall be thrown
neither in nor out. The Head of the Clergy
never came into court again for that purpose
but used to send some one of an inferior class.
In Connecticut voluntary manslaughter is
punished with forfeiture of goods & chattels
with perpetual imprisonment in a Gaol— But it has
been adjudged that involuntary manslaughter
is not within the Statute— & therefore only
punishable as a misdemeanor at Com. Law. Statute
There have been two instances lately in Rhode Island
of involuntary manslaughter on those Statute.
The third species of felonious homicide is
denominated Murder— which term was
anciently used to denote a secret homicide
or killing— But now it is according to the
definition of Lord Coke where a person of sound
memory & discretion unlawfully killeth any
reasonable creature in being & under the King's
peace with malice aforethought either expressed or implied

Homicide – This is the definition of Lord Coke as
4 Bl. C. M'Gould – & adopted by other elementary writers
to which reason I shall pursue it – tho' it is not
1 H. P. C. 425 from being a precise & logical definition. If
1 Hawk the redundancies were pruned off – so that it
11 would read thus – Murder is the unlawful killing of a
2 Bl. C reasonable creature with malice aforethought either express or
190 implied the definition would be left unexceptionable
The difference between voluntary manslaughter
3. & murder is that the former is committed
upon a sudden impulse of passion & provenge
& the latter from a wicked & deliberate intention
to kill – in the former there is no malice
but in the latter malice prepense & express
necessarily implied
But the definition of Lord Coke says it must
be done by a person of sound memory & discre-
tion. This saying M'Gould is an unnecessary
part of the definition – It is implied as matter
4 Bl. C. of course that a person not of sound memory
20 & discretion is in no manner subject to any kind
of punishment – for there can be no criminal
intent where there is a want of will – & an
condemnation of law on insane persons would be
an evil.
1 Hale The definition further requires the person
422-6 unlawfully kill. The unlawfulness of the action

arises from the want of justification Public Wrongs
or excuse. There must also be an actual
killing – In an assault merely the with an Hawk
intention to kill is no murder – anciently how- 196
ever it is said an assault with such intention
merely was punishable with death. To con-
stitute murder the killing need not neces-
sarily be directly – as by a blow or stroke or the Hawk
discharge of a gun – but any act the probable 1 Hale
consequence of which may be & eventually is 455
death – is murder if committed wilfully & 884
with deliberate intent to kill – Thus he who Leach
puts poison in one's way – or sets a trap – or 1441
pitfall – or intends by the force of mechanical 2 Hale
powers in other way to kill – & death ensues 196
is as guilty of murder as if he had done it
directly by his own hand. Leach's report
says McGould is a very high authority he
was a good reporter – & always cite him 1 Hale
when I can find a case in point. — 431-2
The case of the son who by carrying his sick 1 Hale
out of doors & exposing him to the inclemency 197
of a cold morning – was held to be murder tho no Hawk
direct & forcible act – so where a woman car- 118
ried her child into the woods – & covered up with
leaves with an intention to have it die – & a Kite
struck it & killed it. it was held to be murder.

Homicide – In case a person may be guilty of murder
1 Hawk where the immediate act of destruction is done
3–118 by another – As if one incites a mad man to kill
Keling another – or by dureß of imprisonment, a person
55 a third person to swear against a person another
1 Hale falsely in that he be executed – It is murder in
431–6 both cases. Whether the giving false testimony
442–467 against another with an intent to procure him
2 Hawk. convicted & executed – tho he be not in fact executed
82–7 is a question not yet settled judicially. It is agreed
Foster by Foster & Blackstone that this offence was ancient
252 & capital – but as there has been no case wherein
2 Inst it has been punished capitally – the modern
44 law to avoid the danger of deterring witnesses from
1 Hawk testifying in criminal cases – has not punished this
170 offence capitally. The only ground of difference from
Salk 406 other cases of ineffectually endeavouring to procure
2 Ld Raym another's death is the intervention of law – This
1470 seems the ground of doubt – But says Ch Gould I
imagine it does not differ from the procuring
one man to kill another – & this if ineffectual is at
Stat. 5 Eliz. c. 9 Com Law not capital. But Stat. enacts that if any
295 person rise up by false witness wilfully & of pur-
pose to take away any man's life such offender
shall be put to death. This makes the crime of
procuring false witness greater than at com. law –
it does not appear that the person accused by

such false testimony would be actu- Public Wrongs
ally condemned or executed in order to make the
procurer of such witness guilty of murder. 1 Hawk
If a physician administer such medicine or 131
a surgeon make such application as by chance 1 Hale
take away the life of a patient - it is only mis- 430
fortune - It has been said however that
even if the physician or surgeon be not a negli- 664
gent one - (ie) if he be a quack - & death accidentally 2 Bl.
ensues in consequence of medicine & done 121
administered in ignorance - but mere ignorance
this seems of late to be very questionable. For
even he who pretends & practises a known art, as for
a quack. But a quack in administering a reme-
dy which did not at first kill - but
does cause not presently & instantly - may make
it poison - in short the rule is laid down by
all the modern authorities.
No person can be adjudged in law to have feloni-
ously committed murder, unless the death happen within
a year and a day after the injury done or
cause of death administered. As it becomes
more & more uncertain the more time inter-
venes between the cause of death administered & the
death was in consequence of that or some
other cause - the law has fixed a certain day - &
in ascertaining the time the day on which the in-

Foxcroft – just now read it to be received, and
Hawk. recited the verdict. If the death happen
H.P. within a year & day or within the year
Stare after the supposed cause of death was received
Hale – it is matter of evidence for the prisoner to avail
Stare himself of – & whether the death was occasioned by
Hale the first wound. If the deceased did die within the
year & day – it is no excuse for the prisoner that
Hawk. that he would not have died if proper care & attention had been
2 vol. bestowed upon him. He can never avail himself of
Hale the neglect of others in not using the best means
P.C. & care – But if one gives another a wound not
Hawk mortal – & such applications are made that life
P.C. is destroyed – The person inflicting the wound is guilty of murder. If a person be indicted for one species of killing – he cannot be convicted by evidence of a totally different species of killing. Thus if one be indicted for poisoning another evidence that he shot him will not support the indictment – So if one be indicted for shooting with a view killing another – & the evidence be
Hale that he stabbed him & died – So if one be indict
2 P.C. ed for shooting – with a view killing or poisoning
Holt another – evidence that he assaulted him will never support the indictment. But where the
6 Rep. C evidence varies only in circumstance :- as
196 if the indictment be for killing with a sword

& the evidence &c of killing with a Public Weapon
club. This evidence will support the indictment
If two persons are indicted together as
principals - one of the first degree & the other
of the second degree - the one for striking beating
& killing & the other for standing by - aiding
& assisting &c - evidence that the latter struck a blow
beat & killed & the former stood by aiding & as-
sisting will support the indictment. This
laid down as a general rule in Leach's Cases
cases - that in an indictment for murder it
must be stated that the offender was the
person who gave the mortal
ble - but says Mr Gould & Sergeant that
can safely only be those cases where the murder
der is done with actual force or violence & not
cases of starving or poisoning. Thus Lord
of the killing. But the definition requires
that the person killed be a reasonable creature in
being & under the kings peace - Tho the definition
requires that the person killed be under the
peace yet even the Gerald Aliens & Outlaws are
within the rule - any person therefore except
alien enemies whom it is the duty of Englishmen
to kill - is a person under the peace -
But the person killed must have been in being
for the killing of an unborn infant is not mur-
der but a misprision. An unborn infant is

1 Hawk 121

1 Hawk 121

1 Hawk 121

1 Hawk 121

homicide - for many civil purposes deemed in law
3 Bac to be in being - but for this purpose it is otherwise
665 But if the child be born alive & dies with the
Hale Pl Cr 1 Part 2 Ch 31 0
3 Inst. wounds received before the birth - it seems by the
50 better opinion to be murder - Lord Hale however
1 Hawk says it is not murder. Lord Hale if he ever
C. differs in criminal law from other lawyers
2 Hale is always on the side of mercy for the offende
298 he is a very high authority especially in
Hale criminal law. The death of the child must
433 actually happen within a year & a day from
the time of the injury received - to be murder
The declaration requires also that the per-
1 Hawk son killed be a reasonable creature - By this epi-
121 thet reasonable says the Court - Lord Coke doubtless
1 Kelin meaned that kind of reason which a man distin-
127 guisheth man from beast - & not the measure
1 Hale of reason which distinguisheth Select Lunatics
429 & intents from other men. If one counsels
433 another to kill an unborn child - & it is so done
that the child dies after the birth in consequen
he that counsels it is an accessary before the fact.
But says Mr Gould there one species of Statutory
murder distinct from all others - they differ
however only in respect the rule of evidence
The Stat. 21 Jam I. provides that where a wome
being with child which when born would be

a bastard endeavour, privately to Public Nuisance
conceal its birth & death by privately burying
or otherwise she shall be deemed guilty of murder 3 Bac
unless she can prove by one witness or more 685
that it was born dead. A similar Statute was Stat.
enacted in this State but was lately repealed 821
These Statutes threw the burden of proof 2 Hawk
upon the criminal & would if rigorously 610
carried into execution operate with great Keling
severity. However in Eng. & here while one 82.
Statute was in force the courts in putting
a judicial construction upon them have
at least required some presumptive proof
that the child was alive before sentence of
death could be pronounced. Our legislature
says Mr Gould acted very wisely in repeal-
ing this Statute. We have a new Statute how- 1 Aik
ever prescribing an ignominious punish- 502-5
ment for concealing the birth & death of an
illegitimate child — the mother is to sit on the
gallows one hour with a rope round her neck
and be imprisoned at the discretion of the
court.

Having pursued the definition of Lord Coke thus
far says Mr Gould it remains to explain what
is meant by Malice aforethought express or implied — Ma-
lice is the grand criterion to distinguish murder

Homicide - from all other kinds of homicide —.
4 Bl. C. By malice is not meant spite or malevolence
198-9 but is any evil design — the dictate of an evil
Foster depraved & wicked mind. — The court & not
256 the jury are to determine what constitutes
Keling malice — but the jury are to ascertain the
126-7 facts & circumstances which go to make
out the malice. — In that it is a mixed ques-
tion as to what is malice — But as to what
amounts to malice the facts being given is
Ld Ray. matter of law — so in the case of Libel the
1495 circumstances under which the words were
2 Str. spoken being found by the jury the court
778 are regularly to determine whether or no
1 Bur. they were spoken with malice. so in the
3 Ch. Ca. Mercantile law a Bill of Exchange being dis-
Mar honored the court & not the jury are to deter-
(93) mine what is a reasonable time within
2 Black which to give notice to the drawer. In all
9 574 these cases the court in charging the jury
are to tell them whether upon finding certain
facts, or not they are to consider them as amounting
to malice & so find the prisoner guilty or not
guilty. Malice is either express or implied
Malice express is where one with a deliberate &
formed design to kill some particular individ-
ual & does actually kill that individual in

, execution of his design. Then former private injuries
threats - former grudges - lying in wait or in 4 Bl. C.
ambush with a design to kill - circumstan- 199-200
ces like these are deemed to amount to ma- Foste
lice. so where one kills another in conse- 261
quence of an act indicating enmity to all, 1 Hawk
mankind - as by shooting a ball into a croud 121-2
of people - not aiming at any particular in- Kelyng
dividual - it is in both cases malice express 129-130
so if one kills another in a deliberate pre-
concerted duel it is malice express & it is no
excuse that the deceased first commenced 1 Hawk
the quarrel or took the first fire - or that the 124
prisoner accepted the challenge reluctantly, Kelyng
or did not intend to kill - only to wound - in 443
all these cases the homicide is murder by 451
express malice. The seconds of the principals
are also guilty of murder by express malice.
The giving of a challenge is at com. law a high 2 East
misdemeanor - & so the statutes of this state & 581
of New-york, have made it - but there was no need
of these statutes for the purpose of making it a Foste
high, nature misdemeanor. If a person upon 275
no provocation or upon a very slight provocation 1 Hawk
wilfully & kills another it is malice express. 124
Blackstone calls this malice implied - but Hawk-
-ins - express - & so do Gould & think very correctly.

Homicide - Blackstone, etc. Malice, the in most
cases distinguishing is very conspicuous - yet in the
distinction between malice express & malice im-
plied is very obscure & almost unintelligible.
Foster also if one upon a sudden & great provocation
kill another but in a manner so barbarous or cru-
el as manifest a deliberate in-
tent to kill he is guilty of murder by malice ex-
press. As where a park keeper tied a boy to a
horse's tail so that the horse by running killed him
it is also when a sudden quarrel arises between
two antagonists but under such circumstances
as show that he was master of his passions - &
not in a sudden rage. - he is guilty of murder
by malice express. But where it is merely a sud-
den act of revenge - & the person is influenced by
violent passions it is only manslaughter.
Malice implied is where one kills another in con-
sequence of some unlawful act - intending it ei-
ther actual or personally to some other person
than the killing of the person slain. Thus
if one shooting a dunghill fowl with intent to kill
it kills the owner or some other person the
law implies malice. & it a bull be discharged
at one & another be killed thereby it is malice ex-
press tho he does not kill whom he intended - for
his object was to commit a felony actual & the same kind

Once more – if poison be exhibited to the Public Wrong,
poisoning one – & another be poisoned
thereby, it is malice implied. But the unlawful
act attempted to be done must be a felony or else
the crime of killing will be only manslaughter
I should define either malice express or implied
& implied malice differently from any defini-
tion I have seen. Either express malice ~~implied~~ Hawk
seems to me to be that which in point of fact 126
concurs with the act of killing. But implied mal- 2 Coke
lice I take to be that which concurs with the act 81
not in point of fact but by imputation of Law 1 Hale
as if one should give poison to a woman with in- 436
tent to procure an abortion & the woman herself 441
should thereby die – or if one give a poisoned cup 467
to his wife with intent to poison her & the Foster
wife the wife to her child whereby the child 261
died in both cases the malice is implied because
he was not influenced by any intent to hurt Leach
the child – but by legal imputation malice is 115
implied. If a man kills an officer in the pur- Foster
suit of escaping an arrest it is said to be mal- 29-135
ice implied – because his only object is to escape 308
It is no excuse for the prisoner that the proces
& arrest is erroneous – for a process not erroneous
upon the face of it is not void – indeed if the pro-
cess were void the prisoner cannot avail himself

Homicide of it because the officer is never bound to
shew his warrant or even to make known the
1 Hawk cause of arrest until the arrest is made,
120-130 and it is no excuse that the party did not
Yelv know the sheriff's object. There is however
66-8 a distinction to be observed between a public
Foster officer & a private person specially author-
273 ized proximate - for the former is never bou
311-2 nd to shew his warrant - but a private
318 person must shew his warrant before he can
proceed to all lengths in making an arrest.
But it is not to be understood that a private per-
son making an arrest without shewing his
warrant may be lawfully killed - on the other
hand it may be murder to kill him. It has
been lately settled by the court of Kings Bench
in England - that where one is indicted for
killing an officer the prosecutor is not bound
4 T.R. to allege in the indictment or to shew that the
266 arrest was attempted to be made by an officer
2 Mass This is a matter which can always be ascertain-
488 ed by testimony - if he will - to avail himself
542 of the advantage of proving that he was not an
3 Coh officer. All homicide is prima facie malicious
67 & - is prima facie murder. If there is any thing which
will have a tendency to mitigate the punishment
the offender must shew it, for on him lies the onus proban

If the offender denies his crime the Public Wrongs
prosecutor has no proof to make out. — If not Kelly
the prosecutor has only to prove the killing. & it 2
is not incumbent on him to show under what Foster
circumstances the act was done. Every homicide 255
is murder unless justified by the permission of 4 Bl. C
the law or by the circumstances of the case — or 221
unless excused by misadventure or self defence 2 Hawk
or unless alleviated into manslaughter by its 488-9
being the involuntary consequence of some un 481
lawful unfelonious act. 1 Hale
at Com. Law this was a clergyable offence - but 25
by the stat. 23 Hen. VIII - & Edw. VI - 4 & 5 Bill. 6
Mary - principals & accessories before the fact
are ousted of clergy - accessories after the fact
are still allowed the benefit of clergy. & that 522
both at Com law & by one stat Principals & acces-
ories before the fact are punished with death 2 Hale C.
The sentence of the court in such case is that 10
the prisoner be carried to the gaol till dead. If a wo- 2 Hale C.
man condemned to death pleads pregnancy 394-5
execution shall be withheld until she be de- 2 Hawk
livered. Pregnancy however is no excuse for 655
not pleading — that is not delay judgment since
no conviction — a respite however can be 478
had but only once for this cause. The execution
of a condemned felon is never complete till he is dead

Homicide – I have mentioned one distinction
that Coke makes in this subject among the
common people. and it seems like the prevail-
ing opinion among them that if a man be
hanged & upon being cut down or the rope's break-
ing the should revive – he shall be set at lib-
erty. but my Lord Coke there is no foundation
for such a notion as this – he is as liable to be
hanged again immediately as ever he was. and
is the duty of the office.

There is a species of murder also my Lord dis-
tinct from that just now considered on account
of it's great atrocity. This species of murder called
Petit Treason and inferior in the ~~murder~~ atrocious aggravation of
the base allegiance – either is what renders it more
than ordinarily heinous. anciently, privacy & the
absence of the wife & child has the mind were join-
ed as petty treason – but at this day nothing
but the wife actually killing her husband or the
servant his master – or an ecclesiastical per-
son his superior – a prelate – these are the only
three cases in which petty treason may be com-
mitted – but the killing of a master by his servant
a prelate by his inferior or a husband by his wife
would not be petty treason only the killing be un-
der such circumstances as it done by any other
person would be murder in the same manner murder

The crime of petit treason arises out of Public Wrongs
of the relative situation of the parties before the
act done. Petty treason is always murder but the terms are not convertable - murder is
not always petty treason - murder is the genus
& petty treason the species. If a wife after being
divorced a mensa et thoro kill her husband as
divorced she is a stranger - it is petty treason for
the relation of husband & wife is not by their divorce
destroyed. - But if a woman divorced a vinculo
matrimonii killeth him as divorced it is mur-
der only. If a wife procures one to kill her hus-
band - she is accessory not to petty treason but
to murder - because the crime of the accessory
lows that of the principal & the principal in
this case is only guilty of murder. On the oth-
er hand if a stranger procures the wife to kill
her husband the stranger is accessory to petty
treason. The statute of 25 Edward III provided on-
ly for servants who killed their masters & mist-
ress were killed their mistresses - In putting blood
a construction when this statute however it has
been extended to the killing such mistress - This
this case is cited as an exception to the general
of municipal laws that penal statutes shall
be construed strictly. It is said also that the mur-
dering of a man by his servant after the relation

3 Inst 54
1 Hawk
c 33 s 4
2 Bac
205
5 Geo
1 Hawk
142
1 Hawk
132
86
1 Hawk
132
90

Homicide - of master, servant is determined but in the performance of malice conceived during the time of his being servant is petty treason.
Blood. This law of the blood is construed the same cruelly - more so than in the former case regarding the mistress. — The murdering of the father by the child is not petty treason and by a reasonable construction the child can be considered a servant to the father. A child as such is not regularly a servant — it will be remembered that a child that under the title of Parent & Child it was observed that a child becomes emancipated at the age of twenty one - or by marriage or by entering into the king's service — one is general by entering into any employment inconsistent with the continual attendance upon them. But if the child be under 21 years of age & serve in his father's service the killing of his master in such case would be petty treason - but if over 21 - he become a servant either by general express or implied - he is as capable of committing petty treason as any body. Petty treason was originally a clergyable felony but by the stat. 12 Hen VIII it was ousted of clergy & has by stat 23 Hen VIII - 3 4 & 5 of Ph. & Mar. been extended to aiders abettors and counsellors & accessories after the fact.

1 Hale 384
1 Hawk 131-2
1 Hawk 133
4 Bl. C. 203-4

The punishment annexed to the crime Petit treason of petit treason is that male shall be drawn to the gallows on a hurdle & executed – & that female 133
shall be drawn on a hurdle & burnt – The stat 4 Hen 6 c 5 & 30 Geo III c 48 however enacts that they shall be drawn 204
only & hanged & not burnt. Upon an indictment for petit treason the offender may be acquitted of that 399
& convicted of murder or of manslaughter 4 Hal. C.

Arson is the wilful & malicious burning of the 220-1
house or out-house of another. Not only the dwelling house of another but all other buildings within the curtilage or homestall of the dwelling house are subjects of arson – as barns stable outhouse &c and a Barn filled with corn is a subject of arson although there be no window in it 155-6
Hayc. A stack of corn also now generally is a subject 166
of arson – but now in consequence of the statute 7 & 8 Geo. 4 alteration has been effected by a variety of statutes 289
but the burning of a house is not arson unless it does not come within the meaning of the statute 221
indictment – a house-house is not a house – so a
house in a house building &c. A prison is a subject of arson & the burning of a prison without Lord & maliciously is arson – because a prison is a dwelling house – & may be considered as a mansion of the County as a habitation. It is said in almost all the elementary writers that the burning

Dixon along the road in order to avoid another
crowd. It burnt in the usual manner. But upon the Coroner
221 view it was found that part of the road
Leach in question & he is guilty of arson - but the jur
y-ors may find a verdict consistent with the
fact & offence. If it clear not well what knowledge but
it is inference from circumstances that the house
Dixon's did not burn. It has been de-
cided that where one fires his own house
in order to burn the house next - such circum-
stances would be implied malice sufficient to
338 put him in jeopardy - it was guilty of no of-
fence but was liable only in a civil action. So
Fire where one had the possession of the house in mort
Kelly gage & burned it with intent to defraud the
29 other mortgagee & did not burn it - it was held not
Scott to be arson. The prisoners were all brothers
115 It has been settled in the case of the Dixons
Leach which is that where one in the absence of the other
2 p.c made an agreement for a lease & had no
2 d lease but retained it in his possession - with the
205 tenant burnt the house - it was not arson.
Now as the tenant in this case by the contract
was to have a lease he acquired only the right
of the tenant at will - a new agreement was

but the Civil Remedy and Fine Public Wrongs
house in a town is Indictable as a Public
high misdemeanor at Com. Law - and in the 3 Inst
ground of the burning of the house for a Fraud 67
but because it endangers other houses - so if
houses next unto it be burnt & Landlord
if he is unable to rebuild or damnified with 20
the indictment recommended by the statute
He must be indicted for the misdemeanor Forte
on the statute and a Landlord burns his 45
house which in the possession of his Tenant 1 Hal C.
(the the Landlord having the reversion) it is 22.
Arson. Hence a reversioner or remainder man
may be guilty of Arson in burning the premises
in the possession of an intermediate tenant.
Com. The Crime of Arson is regulated in
a great measure by statute - Excepting That
that. our law of Arson is the same as at Com. Law
Our Stat. declares that if any person shall Stat.
wilfully & feloniously burn any Stable Barne 497
Coach house Outhouse Warehouse Shop Mill or other 1812-56
House whether Dwelling house Barn
or Outhouse or Stable or Mill of the like or any
person shall be out or endangered thereby he
or she shall be guilty &c. And there tho
they be not within the Curtilage of the man-
sion house. The our Stat. make the burning

Arson is the wilful and malicious burning of another's house or outhouse or any building or erection whether the property of the offender or not & whether in the night or day. The offence is complete as soon as any part of the building is actually burnt. Thus an attempt to burn a house by setting fire to a bed in it is arson. But an attempt to burn a house by throwing a lighted candle into it is not arson - but an actual burning of any part of the house however small is arson. So if a lighted candle burn a hole in the curtain & the bed take fire thereby it is arson. But the burning must be wilful & malicious & not by accident or negligence. Accident or negligence however gross will be no excuse in criminal justice & so the damages by the injured party. The case would be the same if a person should wantonly fire a gun & it accidentally lodge upon a building so that it be consumed. If one with intent to burn the house of another burns part of his own house & not that of the other - it is arson. The law intends to burn that of the other - & were it otherwise the law would be easily evaded. Even if the house be uninhabited & unfurnished

it was not even clergyable at low Law (Public Wrongs
(ii) when murder itself was. It was enacted at
clergy as long ago as the 21st Hen VIII which stat.
was repealed by the 1 Edw: VI & revived by imbi-
bition from 4 & 5 Phil & Mary. which expressly de-
nied it to accessories before the fact but not
to those after the fact. — The punishment under
our stat. is death if prejudice or hazard hap-
pen to the life of any one in consequence — The
latter part says Mr Gould is certainly too se-
vere for inflicting so high a punishment as
death. What shall be said to be prejudice or
injury to one's life? If one's hair is burnt
from his head — or if one burnt himself to
prevent [illegible] the window it was broken
it would be a prejudice in consequence of the
burning &c. It is difficult to find limits to this
stat. may not be construed to extend. In-
deed says Mr Gould I doubt whether our Courts
would give any construction at all otherwise
than that nothing should be required to suffer
except some very great corporeal hurt or in-
jury endangering life &c. Another stat. enacts
that if any wilfully & maliciously burn or at-
tempt to burn any stable house &c not endan-
gering any one's life — he shall be convicted in a
[illegible] [illegible] [illegible] [

Arson - for the second offence she is to be confined in Newgate for any time not exceeding seven years at the discretion of the Court. — This is confined only when Males - But if a Female is convicted she is not to be confined in a Gaol but in a common Clerk house or common Gaol in the County in which she is convicted for the same period

4 Bl. C. 224 2 Mod. 314 1 Hawk. 150 162 1 Hale. 555 4 Bl. C. 224 2 Mod. 314 2 Hawk. 162 & 163

Burglary is the offence of breaking into a mansion house of another in the night season with a Mal. intent to commit a felony. This definition of Ld Coke seems to be generally received - but by no means satisfactory. For the same may be said of almost every felony - It is not necessary to constitute Burglary that the building broken into be a mansion house of any person - for the breaking into a church is the same Wall of a City is Burglary. Ld Coke indeed says a church is a mansion house for it is the mansion house of God. The fact is the necessity of the building's being a mansion house exists in the case of a private individual's dwelling house even where the building broken into is separate - the insertion of the word mansion is superfluous - any other word equivalent thereto is sufficient. — The term mansion house includes all out houses - part & parcel of the mansion house

curtilage in that portion of ground Public Ways
[illegible] the Mansion house & one common
mansion house or directly connected with it
& use. Here I am told by the Petitioner that
adjacent to the mansion house & one principal part
of which is built over the passage leading to the
stable - this was a building of Mansion house so
as to be used as a dwelling house - but also
for any other purpose - but it was not
[illegible] a Mansion house - but it was not
[illegible] a Mansion house - but it was not
[illegible] a Mansion house

Burglary - It is not necessary for the purpose of making
4 Coke a house a subject of Burglary that any
71 one be in the house at the time the act is com-
Foster mitted. A house in which a family ordinarily
77 resides but having left it for a time with intent
1 East to return speedily - as within a week - three weeks
C.C. or a month is a subject of Burglary. The right
Ruling of protection is not abandoned by such a tem-
26-52 porary absence. The house of a corporation
65 is within the meaning of the rule - provided
Foster any of the officers of the corporation or any body
65 else lives (ie) lodges in it - as a Bank &c.
Fo. 78 So has been decided & seems to be settled since
Ruling that where a house is hired for the purpose of
46 receiving a family to live in it & part of the
Hag. household goods are carried into it before the
76 family had removed or any one had lodged in
Foster it - this house is a subject of Burglary. The
77 who hired it had taken possession of it as his
1 East mansion house by removing a part of the goods
C.C. into it. But a tent or Booth in which
164 may lodge or a family &c [illegible] is
4 Bl. C. not considered a house within the meaning
221 of the rule - it is a house no more than a cage
for birds with a covered top. - The place where one lodges
or if not a mansion house could it be in case
of a shop adjoining to the subject of Burglary &c

pay all goods & conceive our Judges Supreme Court have extended the law itself too far - Further that indeed than the rules of construction of criminal law will warrant. Any dwelling house or any shop wherein goods wares & merchandizes are deposited - are by our stat. subject of burglary - & it is not necessary that the shop or store be locked in or in any manner. Our courts in construction of our stat have gone too far - They have not only construed it literally but have carried it to an extent which no rule of construction will justify - They have decided that a school-house - a boat a coopers shop & in the last session of the superior court that a Bloomery shop attached to the building containing the furnace or under the same roof there being in the shop no goods ware or merchandizes except a decanter or two & some glasses for the use of the workmen - a desk with a ten dollar counterfeit bill & three cents — were all subjects of Burglary. 1 Root 63 Leach 24

The Com. law requires that the house be the mansion house of another - It is therefore requisite to mention the name of the owner of the mansion house in the indictment - and if the house be described in the indictment as the house of A - proof that it was the house of B will not support the indictment.

burglary - The definition also requires that the
breaking be in the night season - Formerly all
the time between sunsetting & sunrising was
deemed night for the purpose of subjecting one
for burglary. But now it includes the time
between the evening & morning twilight only
& it is laid down as a rule that if there be
as much day light or twilight existing at the
time of the act done that the countenance
can be easily distinguished it is not
burglary - but it must be day light & not mo-
on-light

The definition requires also that there be not
only a breaking but an entry - a breaking
without an entry or an entry without a
breaking is no burglary - but it is not ne-
cessary that the breaking & entry be both at
the same time - one may be on one night
& the other on another night. The breaking con-
sists in any kind of a breaking either
by breaking open a door or window - but a mere
picking of a lock - raising a window - taking out
a pane - lifting a latch or the removal of any kind
of fastening is a breaking within the meaning
of the law. And entry by a chimney tho there be
no actual breach is burglary - because as the law
says - it is as much feloniously effected as the natural
of breaking admits

But a breach of the Liberties within Public Wrongs
the house - ie. doors, windows, chimnies &c. Foster 108
is not a breaking within the meaning of Def.
Hence if one enters into a House in the night with-
out breaking in - or breaks in - in the day time, & then be
in the night breaks chests trunks &c it is no burglary
glary. But if one breaks an inner door it is
a breaking within the meaning of the law. Hence if
if one enter a house by an open door or win-
dow & breaks an inner door from one room to
another it is burglary. This differs from the
law of breaking doors in civil cases as settled 4 Bl. C.
in the case of Lee & Gansel Cowp. 1. and accor- 226
ding to the weight of authorities if one actually
or attacks a house with a view to enter & com
mit burglary - & in the doors being opened is refused
the owner - rushes in - it is within the mean-
ing of the law a breaking & entry. The authori- 1 Bac
ties however are not all agreed upon this point 583
Whether one having entered into a house
by - or with the owners consent may break out of
the house without committing burglary is a
Com. law an unsettled question. By the stat
12 Ann. makes the entering in the night with
felonious intent & subsequent breaking out burg-
glary. - This is like breaking out, in cases
of larceny as also in case of rape and other
felonies where the breaking out is part of the

Burglary – it seems to be clear that the breaking
Hale and entering. Hawk. L. 1. 38. 21.
16 But the question remains what shall be
sid. deem an entry — & it is no matter what the
- 1 entry be secured by. Ground or house — tho'
Kel. it is most likely to be the latter. So if one
16 let into a house by the procurement of a
Kel. servt. to steal. The master & servt. in collusion
61 rob a room door may also be burglary — & if a
Kelyng servt open the door with a false key & come
108-3 & feloniously rifle it — or if the servt
open the door of another in the same house with a
felonious intent it is Burglary. — When the room
of a lodger is in such case broken open — it is not
considered as the mansion house of the Lodger
Kelyng but of the owner. If a servant in a house con-
60 spire with another & let him into the house
Hil. C. the consent of the servant with a felonious
21 entry of the person with a felonious intent
& make them both guilty of Burglary. Last
881 was decided at the old Bailey. The
Foste- least entry of a man body — or any part of the
108 body — or of a hook &c. that is used — or a mere
Hawk. 1 instrument to threaten or intimidate the man-
16 er — is an entry within the meaning of the law
sid. 5 And it has been held that if a key be inter-
ted into a lock & unlocking the door with-

mediately round a house. But now Public Houses
by a declaration in 1785 the instrument intended must be one to be used in committing a Breaking. And in another case that boring thro 342
the door with a pen-knife or gimblet or picklock or 1 Hawk
that one chisp fell upon the floor - it was after 162
entry. & it was decided at the old Bailey and
affirmed by the twelve Judges. It is there observed that if one be indicted for breaking, entering & stealing goods he may be acquitted of brea- Leach
king & entering & convicted of stealing upon the 89
same indictment - for Burglary is mixed [illegible]
[illegible] of grand & petit larceny.

But the declaration requires that the breaking 1 Hale
must be with intent to commit a felony: for there 562
is no such thing as a constructive breaking 1 Hawk
implied - as a constructive breach in leases 90-6
the intent however cannot always be ascertained but
one may in fact break & enter the house of another
& take & remove his own goods. But it 2 H. 49.
makes no difference whether the felony intended 2 H. C.
to be committed - is a felony at common law or one 228
created by statute. The definition does not require Bac. 386
that a felony be actually committed (it) aside from
the Burglary. Foster 109 - 1 Hawk 159 - 1 Hale 549
after acquitting a man on an indictment for breaking &
entering a house & stealing the money of A - another

Burglary indictment charging time with between breaking & entering & stealing the money of B cannot be supported. The stealing is no part of the Burglary — the crime of Burglary is complete without theft & hence burglary is not a mixed larceny.

Burglary is a felony at com. law — but at com. law it was clergyable — 18 Eliz. c. 7 & 12 & 13 c. 1 took away the privilege of clergy from the principal — & that of 8 & 9 Will. & Mary from accessories before the fact.

At com. law the punishment attached to the crime of burglary is similar to that of arson — Males for the first offence are to be confined in Newgate not exceeding 2 years & hard labour — for the second offence not exceeding 6 years — for the third offence for life. He must actually have been convicted before of one offence before can be sentenced for 6 years — & he must actually have been convicted of the second offence before he can be sentenced for life — for it is a rule of criminal law that where there is an accumulated punishment for a second offence the offender cannot be liable to the accumulated punishment until he has been actually convicted of the offence before. But 24 & 25 c. 96 s. 54 it declares that if the offender in the perpetration

be guilty of any personal abuse force or violence or shall in a riotous tumultuous or unlawful manner assemble with intent to commit any felony or misdemeanor such persons are guilty of a riot and each of them may be lawfully apprehended without warrant by any person present at the time and carried before a justice of the peace to be dealt with according to law. Every person who shall be present at any riot and shall not endeavour to suppress it or disperse the persons engaged therein or to apprehend them or cause them to be apprehended is guilty of a misdemeanor. Any person who shall be present at a

Larceny – Simple larceny is [illegible] mere
taking & carrying away the goods of another
by which is committed when the taking is
with the intent to deprive the owner of the
property Simple Larceny is the common law
name & the general name in this country
of two kinds of theft – grand & petit larceny
that is the value of the property taken exceeds twelve
dollars it is grand larceny – but if the value
does not exceed that sum it is petit larceny. The
only difference between them consists in the
different punishments to which they are
subject on conviction – Grand larceny
may be punished by imprisonment in the
penitentiary not exceeding ten years – Petit
larceny may be punished by confinement in the
county jail not exceeding one year – or by
fine not exceeding five hundred dollars or both
at the discretion of the court – But if the property
stolen is a horse, mule, ox, cow, sheep or hog
the punishment may be confinement in the
penitentiary not exceeding five years – or by
fine not exceeding one thousand dollars or both
at the discretion of the court – The common law

what the law deems a taking – if Public Money
must be from the hand to hand either actual
or constructive of another person. He laid down
down as a general rule that every felony one- 24-81
sists of a trespass – so that if the party obtain- 1 Hale
ing with a felonious intent of taking 230
it commits no guilt of larceny
This rule tho' it worked well at first was found
at last in the end more in which it came
misunderstood. The law of larceny has under-
gone a great change since Hawkins & Black-
stone wrote. The late decisions are totally 1 T.R.
irreconcilable with what is laid down in these 480
authorities. A constructive possession is a 2 T.R.
special right of particular lien – as where one good 580
are in the hands of a depositary – the bailor 2 T.R.
must countermand the bailment before 9
delivery. But as to the rule that every felony in-
cludes a trespass – there are many cases in-
deed where the felony is accompanied with an
actual trespass – But suppose I find goods & con- 1 Hale
vert them to my own use with a felonious 230
intent. As of a possession by delivery from the 1 Hawk.
true owner if I embezzle them with intent to 134-5
take them away &c – it is not larceny in either 1 Russ
case. These examples however are not law now 5 T.R.
The carrier who converts goods animo furandi

Larceny - The taking of another's property - Also
false pretences - Property in the thing must be given
up & delivery - Title must pass - Intent
to steal must exist at time of delivery - Case
135-a when the rule above was thought to be true
being that if one obtains a delivery of goods from
5-2 another with consent & title he never
acquires title - Rule now changed -
Case 2 Bishop 336 & Bill of Exceptions
95-281 No mere fraud & deceit & promise to pay
152-153 Bar case of sale. It is an offence against property
for one originally to appropriate property
coming into his possession lawfully by the owner's
consent - Intent to steal to the purpose
of original wrong - Difference between the
cases. Case if one applies to another to buy
goods & the owner sells the goods to him - The
65 latter did intend to run away with the goods
55-2 without paying & threw it in one case - Title
did not pass therefore - which he is liable
for either. The difference between the two
cases is that in the one case a bailment was
obtained with an original intent to steal & in the
other a purchase was made with an original
intent to steal. In the former case the special
property only is transferred - The general title

property continuing in the bail- Public stronger
or. - but in the latter case the vendee, bears
with all right & title to the goods, whereas
debtor remains on which a contractor
may seize. Now where the bail-
ment is countermandable there is no need
of an original unlawful intent to steal
in the purchase of making the bailee guilty
of larceny. If one obtain goods under the
authority of law or by colour of law as in case
of an attachment or replevin - he is guilty
of larceny if he took out the process within
intent to steal - so also if goods are taken
in execution upon a judgment obtained by
fraud practiced when the court with intent
to steal it is larceny - for a judgment obtain-
ed by fraud is void & the court will set aside
on motion without error taken. I take it now
the general rule that where the delivery of
goods is a delivery to contain special purpo-
ses & is countermandable at any time by the
owner so that he has a present right & right-
to retain - an embezzlement in one is case is
larceny. Several cases have been decided in
the present reign which abundantly confirm
this rule. A watch maker to whom a watch was
delivered to clean - embezzled it. Reversed this was

cont't right of bailment in transitu.

New. Etc Helen 13 Hawk. 186

Larceny & was held to be guilty of larceny - So the
case it was not pretended that there was any
original intent to steal. The court below
charged the jury that if they
did not find that was the intent of the
taker they were to acquit & accordingly
the jury did acquit. — So another
person was delivered a bundle
to carry. — So another person was delivered
a quantity of linen to be put into
a chest in a warehouse & the same was
done & the chest & linen were carried away
& converted to his own use by the person
to whom they were delivered - he was adjudged
guilty of larceny. The distinction
in these cases between the
civil & criminal remedy for the
same thing. The example of the servant in relation
to his master. So the case of goods
delivered for the purpose of being carried
& sold - But the property not
afterwards held otherwise. So where
one sold goods that in the warehouse
of another, for which he was
to receive money. Held a larceny
to the vendor. Where goods are
originally delivered to one by the true owner
to keep them - & that owner demands it -

an embezzlement by the Bailee Public Wrongs
is larceny. Under the rule as it formerly was
if a carrier when a bale of goods & taken part of
them away it was held to be theft & so when the 4 Bl. C.
same principle if in carrying one the cask be 230
pierced & part thereon out. And the reason given 1 Hawk
is that the carrier has no property in the thing 155
carried - But I say (says it Mag.) he has a property 1 Ld. Ray
in the thing carried. - Blackstone instead a different 85
similar reason - he says because the animo furandi Leach
is manifest - And Hawkins has a still more ridi- 2 Ld
culous reason - that is because the possession of part is a
possession to all. It is perhaps clear that if the
carrier having converted the goods & the place being
of destination then takes them away animo fu- 85
randi it is larceny - & this tho there were no ori- 1 Hale
ginal intent to steal - because the bailment 504 5
(or his special property determine & it is a tres- 4 Bl. C
pas before he takes them animo furandi. And 230
so it is if the Bailee takes the goods out of the 1 Hawk.
second place from that of destination & then takes 155
them animo furandi - for it becomes a tresp - Leach
qui to the bailor after determination. If one sells a 85-8
horse to another & the latter on delivery immed- 401
diately goes away with him any subsequent act of Bl. C.
cannot make this larceny. No general property 502
passes in the bailee according to the terms of the con- t

Larceny Is it a Lett a horse & ride & immediately ride him away & afterwards convert him to his own use — it is not a taking within the meaning of the rule — it is to be implied however that he did not take him originally with an intent to steal him. But how is this reconcileable with the case of the watchmaker — & the guinea — The distinction depends upon the consideration either the one case the owner has a right & commanded the bailment immediately & in the other not — In the one case he has a right of possession in the other not. If the horse is let for a month or a week the bailee has a right of possession during the continuance of the bailment — There is no construction, of law the bailee during that time — Hence if any one takes the horse from the bailee the bailee cannot maintain trespass, for the original taking but he may have trover, or detinue after demand From these cases these principles result Ist where according to the terms of the bailment the bailee has no right to command the delivery at the time of the conversion — that conversion cannot be considered larceny unless the bailment was obtained with an intent to steal originally. Secondly if the bailee accord-

Lucas 592

2 Is 558-401

7 T.R. 9

4 Bl.c 230

1 Hale 504

to the terms of the Bailment had a Public Wrongs
right to consider meant the bailment at the
time the conversion took place so that he has
a constructive possession - that converting is
a taking within the meaning of the definition
Thirdly If the Bailee originally obtained the goods
an intent to steal subsequently - a subsequent
conversion by the bailee will be a taking within
the meaning of the definition. These three
rules begin the Court present us with a syn-
thetical view of all the cases where under a
voluntary delivery by the owner the bailee may
be guilty of larceny. The bare non delivery of
goods by the Bailee by the bailee is not of course
evidence of a felonious intent - even in those cases
where the taking was animo furandi. The act of Bk. c.
of bailee is always a misfeazance & not a non fea- 2 Do
sance - In trover however a detainer is evidence
of conversion - & so a detainer may be evidence of
a felonious intent but not conclusive. A distinction is
taken between a servant's embezzling his mas-
ters goods with which he is intrusted & a Bailee's fraud
The rule as to servants is that if the servant run 5 Ed
away with goods entrusted with him he is not 2 Bl. C.
guilty of a felonious taking. But by the Stat. 31 Geo 2 c 30
a servant of the age of 18 & not an apprentice is li- 4 Black
able as a felon if the amount taken be 40 shillings or more &c
183

Larceny – Whether or not the bond since the murder
decision it should determine in the question should
arise is for Eng. now – the Eng. Courts would say
that at com. law the servant would not be liable
& see no material distinction between this
case & that of the bailee. He holds it
noted in the character of a servant & the owner
may countermand the delivery as between mas-
ter & servant. But at com. law if servant misapplies the
appropriation but thereby the care & oversight of his
master's goods runs away with them he is guil-
ty of a felonious taking – so in the case of a
Poph. Butler taking his master's plate – the actual
84 as well as constructive possession being con-
1 Hale sidered as in the master. The same rule will
305-6 apply to shepherds whose business is to take
1 Hawk. care of the sheep entrusted with them – drive
156 them from one place to another or keep them
on his master land or in the common
1 Hawk It goods are stolen by one man & afterwards
196-7 are stolen from the thief by another – the thief
& 198 that is guilty of a felonious taking & carry
589 from the original owner. Because the owner
is entitled to have a constructive possession
1 Hawk at the time of the second theft. If one steals
196-7 goods in the night & carries them in-
2 Bac. 475 to the country & there is guilty of a felony

taking in either County but can - Public Wrongs
not be prosecuted for the same theft in both 1 Kent
Every theft he takes is a repetion of the same 69
taking. But says Mr Gould I presume that
the rule will not hold when goods are taken
with a felonious intent in one Sovereign State
& carried into another - as if goods were sto-
len in Holland & carried to Eng. - or stolen in
Newfound & brought into Connecticut. However
says Mr Gould there have been in this State
a course of decision the other way. & hence
it is we in this State are continually trying
horse stealers who in the bordering States
having stole horses flee to this State - & purge
themselves of their fellows - On three cases of this
kind says Mr Gridel I have been concerned -
It seems to me to be impossible for us in this
state to have cognizance of an offence committ-
ed in another State - against the laws of that
State. How our Courts can know judicially the
criminal code of another State I cannot con-
ceive. In some States horse stealing is capitally
punished - in others with a fine or imprison-
ment. In County Courts - where the crime of horse
stealing is cognizable here, when the question
has been made before them that they felt them-
selves bound by former decisions. This question was

Larceny brought in the circuit court of the district before Judge Patterson & Judge Law - The
11 S-is- transaction with which the prisoner was charged took place somewhere on the Spanish Main
Upon evidence offered to prove the facts & objection made thereto the court . . . . . .

If the wife of the owner's goods deliv-
ers the goods of her husband to another clandes-
tinely it is no felonious taking within the mean-
ing of the definition - This rule says Mr G.
is founded in the unity of the persons of hus-
band & wife. It is accounted a delivery from
the husband himself. And it is impossible
that the wife be guilty of theft from her hus-
Leach band because of her relation to the owner.
49 But a servant may be guilty of stealing from
his master - or a child his father. - Thus far
as to what it is taking — But
The definition requires that there be an act
of carrying away as taking. And the rule is that
1 Hawk. the least removal from the place in which
140-1 the goods were found by the theft is a carry-
2 Vent. ing away within the meaning of the defi-
215 nition. as if the thief be detected while lead-
Foster ing him out of pasture & he then flee - it is a
127 carrying away. So where the thief was found
Hal. 81 taking down the pod & the door was open &

do where the goods were originally taken. Public Wrongs
B. 1. c. 8 trunk & lance upon the floor. - So where Leach
97
one twisted a ring out of a lady's ear & let it drop 229
in her hair. But it has been decided that the
putting of a bird's wood on one end is not tak- 229
ing within the meaning of the definition.
The definition also requires that the taking & car-
rying away be felonious. Larceny cannot be com-
mitted unless there is a felonious intent - an an-
imo furandi. But one may be guilty of a trespass
or a breach of the peace tho there be no felonious in-
tent. It is impossible always to define definitely
& invariably what will & what will not be evi-
dence of a felonious intent. If a servant takes his
masters horse from the pasture & returns him the
same night - it is not ~~felony~~ a felonious taking -
& if one takes his neighbours plough or cart & keeps
a day or 2 & returns it again it is not a felonious 509
taking. What is a felonious intent is a question mat- 4 Bl. c
ter of fact & not matter of law. The ordinary badge 252
or evidence of a felonious intent is the private
or clandestine taking. A clandestine taking is by no
means conclusive evidence of a felonious intent
but presumptive only. If one takes the personal Leach
goods of another without his consent or against 203
his will the law presumes a felonious intent
& this presumption will stand & be conclusive until

Larceny - rebutted by other evidence - or until the contrary appears. A presumption may always be rebutted but a presumption of law can never be rebutted.

But the subject of larceny must be personal property. Things real or savouring of the realty therefore are not subjects of larceny.

1 East 1 Most real property (as lands &c) cannot from 2 Hale 1 its nature be carried away. The produce of land 1 Hale while growing as corn grass apples when the 220-5 trees leaves of the realty - the realty & it- 1 East. self severed can not subject of larceny the 18 but may be carried away. But if they be sever- Leach ed by one act at one time & be carried away 237 at another time or by another person this is larceny 4 Bla. because the time intervening the severance 257 the land is entitled to real property.

1 Hale But if they be severed & carried away by one 670 continued act then shall be said of the per- 1 Hawk sonal property in the possession of the owner- 141 Fruit severed to day & taken away to morrow or 1 East. even an hour afterwards amounts to larceny 109 it makes no difference whether the fruit is sev- 2 Bla C ered by the thief or the owner - or a stranger. 233 It has never been settled till late if ~~cattle~~ ~~that~~ ~~could~~ ~~be~~ ~~stolen~~ ~~that~~ ~~could~~ ~~be~~ ~~stolen~~ wool. taken directly from sheep or cattle or not Russ. 536 this as well as taking milk from a cow or the like. 81

The law of larceny was anciently Public Wrongs
made with a view to the preservation of the Peace. 2 Bac
The Soldiers had no real estate nor any thing 460
adhering to the freehold - but provisions, & their 1 Hawk
Arms & against the taking of such articles the c. 17
law of larceny was originally intended to operate. 4 Bl.
It would seem to be a strange doctrine that the 232-3
law of larceny should not extend to things savour-
ing of the realty - but upon this idea the law
can be accounted for. At Com law also the 5,
taking of a charter or deed of land is not Lar-Leach
ceny because it was thought to savour of the 8
realty. It is to be observed however that Tro- 1 Hale
ver will lie for a deed & hence it seems to be 66-510
intrinsically a personal chattel. Lemon in
Comyns Digest the reason why a charter or deed 8 Geo.
is not a subject of larceny - is the reason why 60 a
any suit or action is not a subject of theft. 1 Hawk
The general rule is that the goods taken 2
must possess some intrinsic value & for this 2 Bac
reason it is that a note or bond or Bill of Ex- 2, 6
change is not a subject of larceny — The mere cont. 1 Hale
the ink & water is not considered as of any value 66-7
Deeds are called executed contracts & bonds &c on-
ly executory contracts. But could not all of these
answer the purposes of money in the exchange
were they not used as such. By the 2 Geo. 2 Geo.

Larceny - in action are made subject of larceny
2 Bac Ab tit 2 ch 1 (4 Bl 235) at common law (4 Bl 235) & 1 Hawk 138 & 1 East PC 553 & 2 Bl. C. 393 & 1 Hawk 146 & 3 Inst 109

The law deems them of no price. Public Prosy's
value, or their use, &c. & therefore 2 H.C.
Com. law valuable within the meaning of 234-5
the rule tho it is not fit for food — This seems to be
an exception to the rule on account of the 471
high value at which shortmen reckon their Hawk
animal. But the rule that no animals are 2-3
valuable but such as are fit for food applies 3 Inst
mere Natural animals. — For a horse or a mule 109
tho not fit for food are nevertheless valuable 1 Hale
& subjects of larceny. There are however some 511
animals domesticated and yet not deemed val- 4 Bl.C.
uable — of this description are dogs, cats — these 236
are not therefore subjects of larceny — tho tres- Leach
pass or trover will lie for them. & all goods 185 6
are at Com. law subjects of larceny — it is perfect 234
ly clear that money or cash may be a subject of 405
larceny. But it has been determined in the con-
struction of the Stat. 10 & 11 Will 3 by which the
benefit of clergy is excluded from all who steal
goods wares & merchandizes from shops &c — that steal- 1 Hawk.
ing money is not larceny. Goods of which no 34
one is owner at the time of the taking are not 1 Hale
regularly subjects of larceny. But if there be an 512
owner tho he be unknown — the title being as 1 Bl.C.
Lord Coke says in nubibus or in nubis — the goods 295
are a subject of larceny. as Treasure trove Waifes Estrays &c

larceny – and the indictment will be good. The
Dyer & charge the prisoner with having
C.C. the goods of some one unknown. There is no
1 Hawk need of the owner being known except for the
124 purpose of showing that the goods did not
c 46 belong to the prisoner. There may be great
C.C. difficulty in convicting one where the owner
8 Hal. is not known in the very ground. Indeed it
249 is said by some that unless the property
2 Hawk. be known to be the property of some other person
c 46 they are regularly to be pursued to the prisoner
2 Hal. C. owner – where however the prisoner can be shewn
282 are not bail in it is sufficient. Grand juries
1 Hawk on information or affidavit are entitled either
c 45 only to find the bill or the information to be
Hal. to be signed upon a clear view – This is ac-
1 cordingly observed to be the practice where
Hawk. it does not appear that the bill
c 45 was found upon a clear view. The taking a-
2 Hawk. way of a clear bill is done under the pretence
c 46 that a grand jury is not a competent judge
38 act is considered to mislead the court as very
often a bill is found upon a slight & partial
view of the evidence. It is said that one may
commit larceny by taking his own goods
to take them from a bailee or one who
has a special property in them. As if a master
has delivered goods to his servant with a view to

except the hundred upon the Statute of Public Wrongs
Hue & Cry — in Larceny — This however is very far from
from definition of Larceny. I know it may be
said that the Bailee has a special property & that
& may be considered as owner — but he is 110
not considered as owner as of the Bailer. as of
all the rest of mankind he is owner it is true. 1 Hawk 142
If one hires a horse to ride, well the owner has
no right to have him during that time. But if
one bailes cloth with a Taylor to be made in 1 Hawk 74
to a garment — the owner has a sovereign right 89
to take away the cloth at any time — except that
after it is made the Taylor has a lien upon it
till hire be. The truth is the act of the Mas-
ter in robbing his servant in such case is a
shameful act of fraud upon the public.
If the goods of A are bailed to B & a stranger 89
steal them from B — The thief may be indict. 1 Hawk
ed for having stolen goods from B. The Bailee 145
& so in all cases of Bailments where the Bai-
lee has the right of possession as of all others
except the owner. There has been some question
in the books viz. Whether one indict-
ed for Larceny & given their indictment & the
trial verdict found shewing a mere act of tres-
pass — whether such judgment can be revoked
as of the day for the trespass. But it seems now to be

Larceny settled that this cannot be done. Where the punishments are generically the same but of a distinct species - something like that may be done - as where one is indicted for murder he may be convicted of manslaughter - or where one is indicted for petty Treason he may be convicted of murder. Here the punishment are generically the same but there is in treason & Larceny a difference in the nature of the offence - a generical difference.

4 Bl. C. 95-7 All simple larceny whether petit or Grand 237-8 is at Com. Law a felony - Grand Larceny is a 2 Hawk capital offence but is within the privilege of 489 clergy - except in a few instances. Serjeant Hawkins says that the offenders property is subject to forfeiture - & himself to be whipped &c - 1 Hawk. Stone says the offender is to be whipped &c 146 says also that there is no forfeiture of property - However Blackstone says in a former 4 Bl. C. 237 & neither that Larceny is a felony nor either 95-7 a forfeiture of property . . . . .

In Conn. as in Eng. now - there is no distinction as to punishment between petit & Grand Larceny No simple Larceny is now a capital offence. By our Stat. however there are different degrees of punishment according to the nature of the offence

a within according to the nature of Public Whipping
& punished accordingly. All larceny is larceny
at Com. punished by fine & imprisonment
marshalle that the fine is not to exceed £5
& however the value of the goods stolen
amounts to or exceed such sum there in addi-
tion to the above fine the offender is to be
whipped not exceeding 10 stripes. & the
value of the goods stolen is under 40/ & it
exceeds or amounts to 8/ etc - & the offender
refuse to pay or be unable to pay the fine
as above he is to be whipped not exceeding
10 stripes. & the value be ascertained he is
to be punished by fine only. But Stat. alw
enables the party injured to bring his action
quitam & recover treble damages. - & in
such case a civil action in which could
be but nine rule of damages. Where the
value does not exceed 10 dolls the offence is
cognizable & a single magistrate. & over
10 dolls the Court hath exclusive
there may often be a doubt what is the
value of the goods stolen. In such case much
must depend upon the discretion of the
magistrate who issues the warrt.
Larceny are here divided in either simple
or Mixed - Simple Larceny has been considered

Larceny. Mixed Larceny has all the ingredients of simple larceny and is also accompanied with the aggravation of taking from one's house or person - or both. In the one case the goods are taken simply by stealth — in the other they are taken from one's person or house & herein consists their specific difference.

Def. Larceny from the house at that time & def. it is an aggravation of the crime of simple theft — it is the aggravation in the degree of guilt, that are there of a different kind. Def. Burglary — that which goes to the crime is larceny, committed with a breaking of the house & at least some degree — different in the nature of it & burglary. Def. it is the removal that larceny takes not a property to burglary.

Illust. That the malefactor into the habitation or dwelling of Burglary & is incapacitated from the same & the breaking of the door or window or any entrance into the house is burglary. All larcenies whereon from a house are not all aggravated from simple larceny, but are to several kinds of the same, from the house of the person. Suppose from the house & not all of burglary from mixed larceny

Mixed larceny of the second kind. Public Prevent
may be committed by privately taking goods Pub. C.
& from one's person or by open & violent as- 291
sault — The latter is called Robbery & the Hale
former Pocket picking. The offence of pri- 529
vately taking from one's person is a felony Leach
at com. Law — & is called the offence of 285
& the value of goods is more than twelve
more than twelve pence it is a capital 566
felony — clergyable & termed at com. Law but now
by the 18 Eliz the privilege of clergy is taken
away. If the value is no more than twelve
pence it is still a clergyable felony at com. L.
Open violent theft is called Robbery —
Robbery is the felonious & forcible taking
of goods or money from the person of another Hale
& to the value by violence or putting the party 242
in fear & forcibly against his will & the purpose
of administering punishment the value
is altogether immaterial. To constitute
Robbery there must be an actual taking. An Hawk
attempt to rob was formerly holden to be Rob. 14. S.
Bery. but it has been long settled that a mere Hale
attempt to rob is not Robbery the offence 552
misdemeanor. The Stat. 7 Geo III makes such Leach
attempt to rob a felony not capital but punish 82-251
it is by transportation for seven years & perpetual

Larceny & Robbery — The taking is required to be from the person of another — The law however does not require that the taking be against the actual manual possession of another — for if one take goods in the owners presence by violence or by exciting fear it is sufficient — tho the owner or any one else had not the corporeal possession of them. As if he threaten & intimidate the owner of a horse standing by him or at a post & so take him away — or by threatening a driver of cattle by intimidating the driver — it is not necessary that the horse or the cattle be in the corporeal or manual possession of another. So also if one from the instantaneous fear excited in one take goods from my servant in my presence it is from me however with regard to the meaning of the law as in such case the possession of the servant is the possession of the master.

The taking if it is done must be forcible — but it is not necessary that there should be actual violence should be used in the taking. All that is required by the epithet forcible is that the taking should be against the will who has the goods — He who obtains a delivery from me by exciting fear or terror in my mind

is guilty of a terrible taking with Public Wrong
in the meaning of the law. He extorts from B not
one. But a taking which is not either
directly from the person of the owner or from
in his presence is not within the defi- 1 H.
nition of Robbery. As if one third person 6.
hearing of Robbery by one in ambush a- 478
bandons or leaves his goods & escapes & they 1 H.
be then taken it is not Robbery. No fear 1015
or terror were excited. It is laid down in
most of the books that if several persons
combine to rob A & enter upon the project
& one separates from the rest without B's
knowledge or consent & robs B they are
all guilty of robbing B because (as is said)
of the intent to rob B — I can hardly
think this case is law. He could be law fully
do so from combining & inciting to rob B 5 55
then do not know of it by the supposition 5 57
Under the law of arson analogous cases would
would seem to confirm my opinion. If 5 96
A & B combine to burn one's house & B burns
the house alone & separating commits a
battery upon D — B can not be guilty of the
battery. I suspect says Mr G. that the case
is not intended — it was intended
for offence of Robbery is consummated by the

Larceny - act of [illegible]

Robbery attended becomes [illegible]

the property [illegible]

3 Inst 69 Hawk P C 60-9 Hawk P C 141 Leach pleas 104 1 Hawk P C 92 1 Hawk P C 94 1 Hawk P C 60-70 Foster 128

And if indeed he believes the property may be evidence that there was no felonious [illegible] Hawk P C — but there is no such taking as the locus penitentiæ after the offence [illegible] Leach pleas — the offence cannot be [illegible] any subsequent act.

This taking as the definition implies must be by violence or putting in fear. Hawk P C by some of the books that violence & fear were both necessary to make Robbery — but Hawk the last is violence alone without fear or fear without the last is not sufficient to make Robbery. By violence is meant some act — fence threatning with violence is not violence but it is putting in fear. The bustling one uses to a thrust or gesture is sufficient. Violence or putting in fear is the grand criterion to distinguish this kind of Larceny from all others. The word violence implies something more than a mere secret taking.

Every overt act is in law deemed as done with force (ie) the law implies force in all overt acts — But violence in the case of Robbery has a different meaning. The violence in

424 Larceny — As putting in fear is a settled
Robbery rule that so much force or such threa-
Foste tening either by words or gesture as may
128 excite reasonable apprehension or dan-
ger or violence — is sufficient, whether
the intent actually be to kill or
Hawk 2 disarm a person or not is to be left to
170 the jury. Such threatning also as is alle
to according to common experience to ex
cite an apprehension of danger & one's
character or good name is a sufficient
putting in fear. The system of Robbery
has been brought to great refinement in
the streets of London. Every method has
Lear been resorted to to evade the law of Robbery
199 but in vain. A young nobleman meeting
257 one of the professors of Oxford declared he
Foste would accuse him of the unnatural crime
130 of incest if he did not deliver his money.
Kel 87 The money was delivered & the young noble-
2 Hawk 28-9 man was held to be guilty of Robbery. —
Lear For the purpose of exciting fear there is no
204 need of actual violence — Threats or gesture
Hawk 28 by holding a dear in a threatning posture
149 are sufficient. So also if by threats one be
4 Blc. compelled to sell property at a much under
248 value it is Robbery. Upon an indictment

a man near a Public Spring
sufficient to the Jail was it sufficient
Evidence that they were convicted
But at whose the goods were not to take actual 4 Bl. C.
the owner did not watch & part with them 212
as it were direct would neither be
the case? A case is reported in Keling
which was decided by himself where goods
were taken by legal process without 4 Bl.
at night & with intent to steal. The Court
held it to be robbery. Foster says the
Gould that this was not Robbery & that too be-
cause it is simple larceny. There is no vi-
olence or putting in fear which the law
contemplates

It is not necessary to insert in the indictment 70
that the act was done by putting in fear 4 Bl. C.
is sufficient to say that it was done with vi- 2 & 3
olence. to says all Gould Sinter that to aver Leach
a putting in fear without averring the act to be 204
done with violence would be insufficient. And
where the offence is laid to have been committed
by putting in fear it is not necessary to prove
actual fear for threats and menaces are 06- 204-6
termed under such circumstances as are cal-Foster
culated to excite fear are sufficient & sig- 128
hort the indictment it proved. As where one

426 Larceny - was suddenly knocked down & one dis of
Robbery less state had more taken from his pocket
Hawk as there was no previous notice there could
149 be no actual fear - for he was not at that
time a subject of fear it was holden that
the indictment was good tho' putting in fear
Hawk only was alledged. Where a thing taking
256 goods without violence or putting in fear
Hawk is Larceny merely - Foster - not settled
150-149m It is said by Hawkins not to be Robbery. If one
Dyer snatches another out from ni. head - it is not
224 a direct done privately - no - it done by violence
Heling or putting in fear such as the law expects
28-30 in Robbery - I should apprehend now - Mr. Gould
that this might be construed - this larceny.
It must be simple Larceny if there is a taking
from the person & upon this ground I go today
Alg. in subscribing it the simple larceny. The
taking is under such circumstances as does
not amount to a taking from the person. If
it not larceny from the person if one takes a hat
lying upon the table & the owner standing by it.
Leach Hawkins decided that an indictment for
53 Robbery in the high way - is not supported by evi-
dence of robbery in a dwelling house - but if
504 the offence had been laid & been com-
mitted in dwelling it not that it was com-

mitted in Gothen would suffice to avoid
the indictment - & the reason of the dif-
ference is that in the former case the
place enters into the definition of the of-
fence - in the latter case the venue is laid
by way of venue - & public highways cannot
be laid by way of venue. 49+50

Robbery is a compound crime being theft
within the privilege of clergy till 34 Hen VIII 245
3+4 Will & Mary which omitted it of clergy.

In Lan: Robbery is punished precisely as Bur-
glary. & a male be is to be sentenced in Newgate
3 years - & the second offence 6 years & for the
third offence during life - & a female as there
described. But when the Stat. provides that
if the offender commit violence or force or
is furnished with instruments indicating
violent intentions or be guilty of personal a- Stat. c
buse he shall be confined in Newgate for 84-5
life for the first offence the same difficulty
attends the construction as was observed in
the case of Burglary.

Forgery

Forgery is the crime falsi of the Roman law 47 Geo. c.
viz the counterfeiting making or alteration of 247
a writing to the prejudice of another's rights
Formerly a great many writings were not subjects

228

Forgery — forgery. It was always agreed that
Handwritable records, Chancery rolls, deeds &c were
235-8 subject of forgery — as well, there was so-
lucy 81 many, much deeds. Since the [illegible]
the Heads William made [illegible] forgery
69 according to the rules, opinions, the method
ed in [illegible] and [illegible] public work-
ing [illegible] Chancery will would not con-
sider [illegible] it was not [illegible]
[illegible] same [illegible] [illegible]
[illegible] [illegible]
[illegible] [illegible]
[

Clerk making an alteration at Public Office
ought to writing &c as it is make a bond in By
name & subscribes By name & it- or altering
a writing already executed. It will not be
found true however that every alteration 886
of a writing amounts to forgery - it must be
to a certain description. Hence it is not-561
lloyd & write a will & the testator reads it- Now
lastly insert a legacy & it is forgery. Per Ld
[illegible] making a false instrument. (Cntr. Doc. 884)
In this example it cannot be forgery after
the Testator has signed it- because till then there
is no will: it does not import to be a will 886
till executed. So if one writes an obligation in
own mother-name it is forgery- This spe- 561
cies of forgery is very much practised. The
fraudulent subscribing a-another name
to an instrument already made in a fresh
forgery - else if one only makes his mark instead
of another with a fraudulent intent it is 61
forgery. It is not necessary to constitute
forgery that the writing be effectual at
the time of the forgery provided it were capable
mine - Thus if one makes his will & while 108
it is ambulatory (sic) during the life of the Tes- 891
tator it is forgery & altho' the offender may not
be prosecuted before the death of Testator. 48

480 Forgery = The instrument is not complete
1 Hawk. P.C. 356 & 191 & 192 & 12 Mod. 498 & 1 Hawk. P.C. 36 & 2 Bac. Abr. 56 & More 619 & 3 Mod. 66 & 12 Mod. 498 & 1 Hawk. P.C. 36 & 2 Bac. Abr. 56 & More 619
& cannot be made so by the party who is bound by it, as where one has signed & sealed a bond & delivered it to the obligee, but has not filled up the blanks left for the sum & date, this is no alteration, but is at the same time making a bond. Every alteration in a writing does not amount to an alteration which the law takes notice of to avoid the instrument altered. The general rule is that a fraudulent alteration of a writing in a material part, in which an alteration only is made, such as erasing, altering, &c. the name of the obligee or the sum from £100 to £1000 instead of 100. The distinction between material & immaterial alteration is not well taken in the books. Every alteration be made in a note or bond by the party (i) the obligee — it does not avoid the instrument to the prejudice of another person but the party himself — for the rule is that if an alteration be made by the party himself even in an immaterial part the bond is void — If the alteration be made by the obligee or him who is bound it is no injury to the bond. & so it is if made in a material part — & hence it seems it is no forgery. It is said that one may be guilty of forgery by making & executing a deed in the name of

& says the Statute is true. Public Writers
Thus it one make a deed & leave it with Mark
& another make a deed & leave it with Mark
& another makes a deed & leave it with Mark
Deeds & another it — so that the latter cannot
prove when the writ of it have been made Sci-
ence the writing is in expiry — the state now
is false. (Cont. Dyer 288) If one having found 100
a bill of exchange keeps it & never means
upon it in order to get it discounted it is felony
by Com. Law. An indorsement is not
like a writing upon the back of a new
bill the name of the payee — this gives it no
currency without such indorsement.
He who writes an instrument by the express
direction & in the presence of the person in
whose name it is made signs such person's
name & it puts his seal it is not guilty of forgery.
I should say, they said that he whose
name is subscribed need not be present at the
signing. — However the signing is in the Mark
absence of the person — there must be a power 887
of attorney in form. But no verbal power
of attorney will do in his absence. Neither
can the principal make such signing good by
a ratification & it is forgery. This case is the ma-
king of a writing.
But it must be a fraudulent making. There are

Forgery Many cases where words are altered and
blank not fraudulent and written the meaning of
55. the parties is as if the clerk had
Nov. altered the word new into former — it au-
89. rotes only against it — therefore is not
Leak fraudulent & of course not forgery. So is
3 T. in the following case a mistake in the
Hoot attorney in what sense I know not — it may
94. perhaps be a question of policy. Where
1 Cox the alteration would not amount to forgery
26 still it would vacate the note & the maker
Esp. D. it was in a material or immaterial part.
224 A non-clearance cannot regularly amount
to forgery unless intent be fraudulent. Thus
if one employed to draw a will inserts a false
legacy — for which he is not directed & it is for-
gery — but if he omit to insert a legacy which
he is directed to insert it is not forgery. So
if words were omitted with a fraudulent intent &
if however the omission materially alters
Nov. the limitation of another estate it is forge-
101 ry — thus if an estate be given to A for life
Hard with remainder to B in fee = the omission of
637 the former is forgery. The omission amounts
Cox to a positive fraud to B an estate for the life
260 of A — for the possession of B is by that omission
accelerated. So appearance cannot be

Forgery cases reserved. It was doubted whether
determine or it would have been regarded
as it is one merchantable instrument
2 Del Pa indorsed. Held it was sufficient that the
forged instrument would be evidence
etc. for prisoner & was material
74 but if produced it may make a very appli-
tion of a fraudulent kind. — Where one
forges an instrument in the name of a
other & took it in his own name never
produced it but it was known to have
years ago was lost it was held
tice to draw bills of exchange in favour
of a fictitious payee — & so indorsing the
Leach name of such payee upon the bill drawn
83 it currency. The question arose whether
182-216 or not this was forgery — & was decided
be forgery. — The case did not
give the whole as may appear — the case
it is true cannot be defrauded.
The instrument claimed to be forged must
be set out in the indictment in words
& figures precisely as they are. — It
must be recited — & the general rule is that
the least variation between the recital &
the instrument itself when produced is
fatal. This rule however must be applied

The law on this subject is well Settled
established for 2 vol. Hawkins P.C. chap. 229.
If in reciting a forged instrument the Learned
misrecital or misspelling of words in such
that one word is not converted into a matter
is misspelling — it is not fatal — it is not
misrecital — as in reciting the word Un-
derstood — this be left out — as in Understood —
Stood — there being no word in the English language called
Indeed there are many cases where two
distinct words have the same pronunciation but
but are spelt differently — as see — sea — sea — sea
can be — yet a variance may be fatal. Leach 6 —
When an indictment charges one with the
crime of forgery — & describes the forged in-
strument as purporting to be an instrument which
in the indictment will not be supported.
unless the instrument, mentioned in the Learn-
ed crime which is described in the
instrument is made to purport to be what it ap-
pears to be upon the face of it. Thus if the in-
strument is described to be a promissory note
& it appears upon the production of the
change it is a total variance.

At Com. Law forgery was no felony — it was punish-
ished by fine & imprisonment. By Stat. 5 Eliz. 14
made forgery in almost all cases a capital offence

Forgery — And this is almost the only offence
known to our common law. — At common
114 [illegible] extreme is forgery has lately undergone
[illegible] become. — It was a kind of
common law, principle not to punish forgery.

On 5 Eliz. forgery is punished the second
Offence — & double damages allowed to the
injured party — the offender is made incapable of giving evidence in any court & has also follows as a consequence at com. law.
Besides this statute forgery can be
said to be punished only by the statute
punishment there are the words "wilfully"
However it is agreed among the judges
that there is no difference between our
stat. forgery & stat. at com. law. The only
difference is with respect to the form of
the indictment. The word alter is not in
our stat. so that the prisoner is charged
with making & not with altering & uttering
I think they will [illegible] that altering & making
may be considered as the same. The
word alter is perhaps in Lawrence's
case. The statute makes the altering & making
[illegible] punished in the same manner. Forgery in the
[illegible] gives a note to 15 in form as before

I promise to pay B or good & lawful Public bill money
Tel current money of Connecticut value
received — signed A. — B covenants & assign it to be in consideration of goods
delivered — B before he delivers the
note according to the covenant writes
the word good — in consequence of which
no recovery could be had ag. A the promi-
ser by the assignee — for it was an alter-
tion made by the assignee — The note was not
negotiable — it was not given to B or order
an indictment will lie ag. B. for forgery &
at his Trial two questions arise & are re-
served for the opinion of the court — How
was it a forgery & could the promi-
ser be admitted as a witness to prove the fact.
The obligee's altering his own note, tho' he
could in ordinary case, would not amount
to forgery — the alteration would only go to make
the instrument void & being an immate-
rial part by the agreement — because it did
not injure another right. and tho the assignee
if after the alteration it could not be forged.
But in this case the alteration was made at
the same time & part of the agreement — after it became the
equitable property of the assignee. How therefore
the injury to the assignee is meant not clear it

Evidence. and the question was whether that the alteration was made with a fraudulent intent. If had there been a deed and the property & proper within the meaning of the definition — & it a fraudulent alteration & working to the prejudice of another right. But where is there not a destruction of the instrument & not an alteration. What if the head erased the name of the obligor — What if the head erased the whole note. will it do to say by way of argument that the assignee was liable to be defeated & that other assignees after him would be liable to be defeated — The same argument will apply if the note had been altered before assignment as to the admissibility of the parol testimony — the authorities are against it aside from the authorities says Mr. Gould I should say upon principle that it ought to be admitted.

Perjury

2 Bl. C. Perjury is defined to be the swearing wilfully absolutely & falsely in a matter material to the issue or point in question by 162 an oath lawfully administered in some judicial proceedings. In this swearing 378-9 is required to be wilful & intentional — for 4 Bl. where one by surprise mistakes it is not perjury 515 the word wilful there seems to be used in the same

sense as the word intent – indeed Public Wrongs
the same as the word willing or willingly in the 4 Hol.
stat. – But the false testimony must be 5.
in the course of a judicial proceeding – or Hawk.
in some proceeding relative to a civil action 5.0
or prosecution. The oath must also be ad- Bro. L.
ministered by some officer qualified & ad- 1684
minister such oath. It is immaterial Hob. 62
whether the court in which the civil suit
is a court of record – or not a court of re- Bro. E.
cord. The other courts are deemed equitable 98.
record – than courts of Com. Law. courts of 609.
Chancery – Ecclesiastical courts – Military & Bur
& marine courts & courts of Admiralty & 1169.
the courts of the Universities – are none of these
then courts of Com. Law. But in any of 53
these courts perjury may be committed in like
sort as in. There is a very different distinc- 107
tion between these courts. – All our courts Hawk
are courts of record – Courts of Chancery 8.9
Probate courts – & courts of single ministers Hawk.
of law are all courts of record. But still 8.20.7
the oath must be in some judicial proceed- Hawk.
ing – or if one tells a good & material oath &
there actually is a matter to the validity of it
a magistrate it cannot be punished since 166
& so it is of any voluntary or extrajudicial oath.

Perjury – Is the act of the magistrate or
Mich. such application and administering the
157 oath – Semble in criminal cases
if not essential proof that the oath
be administered in accustomed manner
as by swearing. Perjury may be com-
H.P. mitted on oath taken before affidavit or
915 deposition – but if the affidavit or
deposition were never sworn – it
Hawk. sufficient that it were taken and
820-1 be used. See the act, perjury complete
Stra. when the affidavit is delivered.
84 Perjury is assigned that such public oath
Salk. affirm as aforesaid instead of oath –
166 not prejudicial as a preliminary oath – The
oath of office is no perjury. But per-
jury is predicable of any false oath ma-
terial to the point in question – the judg-
ment upon that point may not affect the
judgment upon the principal point in
Hawk issue. Perjury may be committed by a
820 false oath in any interlocutory question
Str. 6 as by swearing that the bail is worth no-
146 new sufficient – when he knows not a word
about it – or knows to the contrary – or if
when the voir dire he swears he is not in-
terested.

It has been agreed that her Public Witness
pure is not predicable of promissory
oaths — hence a juror may be sworn Hawk
to testify the truth of an act but 52 2
determine according to the testimony of 1 H.P.C.
others cannot in this capacity commit 330
perjury. But a party in a suit when called
allowed his oath in any judicial pro 470
ceedings may commit perjury as well as
as any other person. The Lyf answering 609
chancery is always under oath. In bona 2 Leb.
the answer of the respondent is not under 452
oath except when required by the plff
or where a discovery is sought. Here
therefore his answer may be received for
other testimony. Parties are also admit
ted to their oath in Com. in the action
of detinue, trover, book debt, or mistake or libel.
misapprehension of the adverse party Third v. 18
conclusion is not perjury & upon the same 2 Leb.
principle if a witness explains incorrects 516
himself — tho he intended to testify in such cases
a manifest that a wrong interence should 474
be made, yet it is not perjury. It is said 3 Mod.
not to be material whether the matter sworn Sedm. 294
be true or not true if the witness did not 1 Hawk. 637
know it to be true. — he testifies to what he 2 Hawk. Sec

a right to run a fence on the road at such a
time — whether he rode or walked or took a boat
would not be material to any other issue before
the jury — But if the testimony tho' improperly
admitted tended to aggravate or
extenuate the damages it is known to the
jury in assessing damages — all that is
done in such case the Court should do
is to instruct the jury — but other circumstances in
determining whether — may alter the amount
of damages. If the testimony is such as is
likely to influence the jury & give undue credit
& weight to material — the Court should
grant a new trial — But if certain circumstances
are in the case upon which upon the
whole case it was held to be proper
for — Hawkins says the testimony in this
case is immaterial — but intended to influence
the jury to believe that the sheep were the
plts. I doubt says the Court whether this
testimony is immaterial — It does evidence
& prove the identity of the sheep — But there
are many circumstances in the case — as
says he — later in material that may or may not
influence them — as whether the deft beat
the plaintiff a second or third time. — Verdict for

Perjury however may be good tho' the
Plaintiff made but strong encroachment
688 false declaration as to the instrument
declared upon amount to perjury — The rule
145 of damages in actions for torts is the
same in the instrument and &c.
2 Del Ra It is not essential to show in what degree
258-289 the evidence is material to the point in ques-
tion — much less to show that it is decisive
1 Hawk of the issue: in order to convict one of per-
925 n jury. It is incumbent on the prosecutor
805 however to show that the evidence was ma-
terial to the point in question: and for
the purpose of showing this it is necessary
that the record be produced to show the point
cited in issue — but it is not necessary to go any
468 further into the merits of the case. Hence
695 the Postea alone without the judgment is
good evidence to show how the question arose
In most cases a verdict cannot be pro-
duced in evidence till judgment is ren-
dered but here it is otherwise. The time
in which the perjury was committed must
be set forth or described in the indictment
Hawk 570 It is not enough to say that in the year
1 Hawk between such terms or such a time &c. the
255 Grand Jurors &c. upon their oaths &c. that

but the nature of the action Public Wrongs
must be set forth. It is not necessary in 1 Leon
order to constitute perjury that the false 211
testimony be credited by any body — 2 Leon
Comyns it is not necessary that any body 230
be actually injured by the testimony. The 3 Bac
crime consists in the abuse of judicial 315
proceedings. — — — — — —

It has been decided in Engl that the word
Wilful is not absolutely necessary to be in-
serted in the indictment — other words
tantamount may suffice or please. Bost.
in an indictment for murder, the word
can not be omitted. It has been holden that
in an indictment for perjury the words Lucas
falsely & maliciously are sufficient — for if one 69
swears falsely & maliciously — it necessarily does not
implie that he does it wittingly intended — & falsely 95
for the purpose of convicting one of perjury, where
it is a rule of law that there must be two 37
witnesses at least — otherwise it is no more 2 De-
than oath against oath. Circumstantial ev- 305
idence is in general sufficient to prove
any fact — But it is now settled that cir-
cumstantial evidence of the fact of the 2 Wils
defendants having sworn falsely or been guilty 471
corruptly & wilfully — it is not sufficient to convict

Perjury — Perjury is an offence which cannot in its nature be committed by two jointly etc. and therefore two cannot be joined in the same indictment — for it is a rule in criminal as well as in civil cases that two persons cannot be joined in cases where the act combined of could not have been committed jointly. — so it is in Murder so it is in Perjury. All acts committed by violence may have been committed by two persons jointly — But in the case of Perjury there is no actual violence — so Subornation of Perjury — an offence which consists in the procuring of another to commit perjury is an act that may be done jointly & therefore two persons may be indicted jointly.

Subornation of Perjury

Subornation of Perjury is the offence of procuring another to commit perjury. The perjury must be actually committed in order to the attempt or endeavour to procure another to commit perjury is not subornation of perjury but is at Com. Law a misdemeanor. Perjury and subornation of Perjury were punished at Com. Law — at first Capitally

afterwards the offender was Public Whipt
& banished the tongue being first cut out
& afterwards a forfeiture of goods &c.
now by the stat. 5 Eliz. ch 9 sect 2 they are also
punished by fine & imprisonment and 138
with incapacity to give evidence in any
Court of Justice. The legal meaning of the 5 Eliz.
consequence of the perjury (ii) of the convic- 36:
tion of perjury. — They cannot testify nor
be a jury. when the perjury is committed 5 Eliz.
by making oath to a false declaration or 220
affirmant — the indictment is much the 2 H.
same as in forgery — The declaration must 28
be set out in words & figures — & the least 5 Eliz.
variance will render the instrument in- 660
admissible — the least variance between
the prosecution or indictment (ii) if one
word by misspelling be converted into another
Under the stat. Perjury & subornation of
perjury are punished by a forfeiture of
more property & penalty of 6 l. 8 s & imprison-
ment in the gaol 6 months if a male
& if a female in a common gaol. The offen-
der is disqualified to take an oath in any stat. 5
court of record — & pays all Costs & suffers 220-
the whole con. law consequences will follow 240
and in case of inability & pay the fine he is to be set

Perjury in the Pillory one hour. The affirmation of a Quaker when liable is punished the same as Perjury. Our Stat. contains one other provision — If any person make use by false writing or writings of purpose to take away any man's life such offender shall be found guilty of felony and suffer as in cases of wilful murder. Other capital offences — Of these were treason, misprision of treason, petit treason, & all the several species of murder, arson & burglary. These are usually termed high crimes, because they are regulated principally by our Statutes. The principal peculiarities of these will be considered. — Of non-capital crimes —

The Courts of Criminal Jurisdiction in this State

The highest court of ordinary jurisdiction is the Superior Court. — In other States their highest ordinary court is usually called the Supreme Court.

The Superior Court has cognizance of all offences punishable with death — viz. high treason — banishment — imprisonment in Newgate & the offence of misdemeanor. And of all these except misdemeanors & imprisonment in Newgate the Exchequer has concurrent jurisdiction.

In one instance of misdemeanor Public Prosecutions in a Superior the jurisdiction of the Superior Court is not exclusive, & that is the crime of horse stealing — the Inferior Court has concurrent cognizance with the Superior. We have no such punishment as whipping to be considered in — & as to what says Gould that that idea was borrowed from the Common Law it is a loose expression — the Stat. contains nothing on which it can attach. There is but one offence punishable with Banishment. Riot is an offence triable by the Superior Court & the County Courts — Thus & horsestealing are the only two cases where the jurisdiction of the Superior & County Courts are concurrent. The Superior Court has cognizance of the high crimes & misdemeanors. The line of demarkation or distinction between high crimes & misdemeanors says Mr Gould is not well defined. Those crimes which consist in the attempt to commit a criminal act are deemed misdemeanors & are within the cognizance of the Superior Court — as an unsuccessful attempt to commit murder the Superior Court has cognizance thereof

Courts of Criminal Jurisdiction — of offences
agst. religion — of blasphemy.

Stat. 85 ch. 15 the Court of Common Pleas — the Judges
jointly, that the court may adjudge
of all offences against the laws made
with death & corporal punishment
except the crime of murder
and the other courts the
their jurisdiction is excluded. — the
Supreme Court's jurisdiction is co-
ext. ejusdem extensive with the State — libel — Nisi Prius —
Ego that court there is no appeal to the Supr.
Court in criminal cases.

Justices of the peace & single magistrates
have cognizance of all offences — of which
the penalty does not exceed seven dollars
except in theft where the amount of the
goods stolen does not exceed 10 dolls. If
the penalty is discretionary & notice of
the fact be given on recognizance — the pen-
alty must be limited. Theft is the only
instance where a corporal punishment
is peremptorily provided by stat. — There are
many cases where it is left as an alternative
if the offender cannot pay the penalty. Our
stat. also provides that a single magistrate
shall have cognizance of all trivial &

The jury except the offence be Public Wrongs
aggravated by some notorious & high-
handed violence — & in such case he is to
be recognized to appear before the Justices
Court & prosecute such offenders. Here
the single magistrate acts quite as a court
of Enquiry. Single magistrates also act
as a court of inquiry in all criminal
cases above their jurisdiction: & in their
capacity it is their proper province to in-
quire whether the party ought to be bound
over to have his trial in a superior court.
or discharge him. The Justices Court of
Session of the Peace in all criminal cases whatever
except in trial of cases appointed by statute
to Exchequer. as drunkenness, profaneness, bak-
ing, selling bills, & tickets &c
In criminal cases the jurisdiction of the
Court of the Peace is not confined to the town
in which he lives. It is otherwise in civil
cases. The case may be however that the
town may be interested — & no civil neither
is capable of trying the suit — as by being
related to one of the parties — I never known
one case in the World where all the justices
of one town were related to one of the parties
all offences are triable in town. as in Eng. only

1 Bott 158
1 Bott 158
1 Bott 158

Bail - ~~in that County~~ in the county where the
Hawk. offence was committed. — The offence is
not there tried. — He have no fact on the sub-
Peling ject - but one court will be advised. Trin
78-90 Eng. practice. This rule however does
Burg. not hold as to civil actions - (civil & the
760 locality of the offence — Jeremy may bring
Hawk. a qui tam action in the County where
401 either of the parties live — tho the offence
were committed in a distant county.

Bail in Criminal Cases —

This subject is interesting in practice &
short & summary: When one is arrested
Bl. c. & brought before a magistrate charged with
296 a crime or offence not cognizable by him
Stat. he is to inquire into the facts charged and
111-420 discover whether or not he ought to be held
to trial. But in such case the magistrate
has no right to examine the prisoner him-
self as to his being guilty or not — he has no
4 Blc right to resort to any evidence but such
287. as is admissible in any court of justice.
296 The practice therefore of asking pointed ques-
243 Mass. tions to the prisoner which, if he will more
or less in every case is reprehensible
If after inquiry the magistrate finds that
the offence charged has not been committed

or that the charges against the Public Prosecutor are groundless – he is to be discharged – But when there appears evidence 296
of the prisoner even the slightest circumstance either presumptive – it seems to be agreed to be the duty of the magistrate to commit the prisoner to gaol or permit him to bail – in the sense here used is a delivery of the person of the prisoner over to his sureties who become his keepers on their giving security that he shall appear before the court having cognizance of the offence – 1 Hale 96
The bail have a right to seize & right to confine him. – There are some offences which are not bailable. Here the prisoner is to be committed to gaol – there to remain till a court of competent jurisdiction shall set. — 1 Hale
It is in general true that in all offences under or below Felonies the offender is intitled to bail unless bail is expressly prohibited by Stat. – Saith Blackstone lays that all Felonies were at common law originally bailable, 220
even treason & murder – according to the 4 Inst. c. 29. in all offences except those wherein the 298
keeping committed forbidden. But by Stat. the Stats. West. II (13. Edw. I) bail is denied Ch. Keller.
in case of treason & in many other Felonies.

Bail – Under these Statutes the gen. rule is that
the Bail be taken in every case of felony
or cen. design – or where he is notoriously
guilty. These Statutes however have never
been entended & extend. to the Kings Bench
in England. This court or any of its Judges
may admit any person to
Hawk Bail charged with having committed any
175-6 crime whatever. – These Statutes extend
Salk. only to justices of the peace & Sheriffs but
105 the Judges of the Kings Bench & Common
5 Pleas in the case of felony where Bail is
911-1142 prohibited by the Statute. There are seven
543 species of crimes mentioned in the Statute &
Leach 2nd ed where the Prisoner would be liable
not to be materially affected by confinement
Com. in Prison. 2 Hawk. 15th-175-6th

But it hath been holden that where
a Court of Record (The Queens Bench)
upon conviction of a criminal
154 fact – unless the Statute contains. This
Hal. rule however is dispensed with in all
150 other bailable by the Kings Bench except
P.C. capital crimes – & that for a contempt
22-49 in open Court. It is a general rule that he who
Hawk is Judge of the offence or has cognizance of
145 the offence of which the offender is accused
may in any case admit such offender to Bail

[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

Bail — If the offence is punishable by fine only the Court may take Bail in their own & the Treasurer's Bail. — If the offence is cognizable by the Court of Com. Pleas — The Bail is to be to the Treasurer of the County. If a Criminal magistrate is taken Bail in a case of the Town Treasurer where the offence is tried. —

Bail. If it is not in the Com. Pleas Bail is to be taken by a Magistrate that is in open Court & Bail by the Criminal does not admit — The Sheriff & Coroner officers of the Court. The Sheriff are there required in the greater Misdemeanors — Bail in the Bail Office. — If not in Bail for Appearance in open Court. To Com. before Bail taken is also the Recognizance entitled Bail — or if any Bail arrive in Bail is transmitted to Com. in Misdemeanor or Indictable by one J. Justice Commissioner the Sum required Magistrate may take Bail in open Court. Bail is the offender to Bail & not Amount after Trial to bear the verdict — The Bail is applied — & about Appearance may in Town Bail the Sum not exceed & Bail where the Amount

of the case of [illegible] a corporal public punishment is inflicted it is necessary that the prisoner be present in court to hear the verdict but where the punishment is merely a fine the prisoner need not be present to hear the verdict - & of course no forfeiture of bail In the former case the forfeiture of the bail can be no sort of substitute for the corporal punishment but in the latter case it is otherwise. I have lately found that in the inferior offences in Mr. England the prisoner may plead by counsel. 59
Fitz. pretty does not need the prisoner's presence in court. When a prisoner is pro-
ceeded for an offence & is acquitted of that offence but is proved on trial to have com-
mitted a different crime from that with which he is charged - he is not to be discharg-
ed - but it is the duty of the court to retain 655
him till an indictment be found for the
crime of which he is guilty proved upon
him.

Costs

In Eng. no costs are ever taxed on either side in criminal proceedings except (Bullock Law of Costs.
where specially provided for by Statute. Costs
are not taxed for the prisoner where he is 21-125
acquitted because it would be making the
king responsible for the conduct of the prosecution

Ch. 24 — neither can the Land, or the Issue or Profits thereof be extended or sold until the same shall be found by Inquisition to belong to the Party against whom the Process issued.

Sect. 36. Under what Circumstances the Taking out Letters of Restitution in Case of Acquittal is allowed. — The State here in its corporate political Capacity prosecutes. It is provided by this Section however in certain Cases that if the Prosecution be carried on by malicious or blameable Conduct in the Prisoner he shall pay the Costs of Prosecution. The Act does not apply where the Prosecution should be carried on without Costs. When the Prisoner is unable to pay the Costs — the Expence of Prosecution is to be defrayed out of the State Treasury — if the Prisoner were found by the Superior Court to be insolvent.

Sect. 37. But if tried for a single misdemeanor by the Law the Costs will be allowed against the Party. the Treasury of the Town in which the Prosecution is preferred. But if two or more Persons are tried for a misdemeanor and one convicted and the other acquitted the Costs are to be paid out of the State Treasury in the one Case and out of the Treasury of the Town in the other.

Superior court February session 1800

4 [illegible] present the [illegible] Judge
2 6/16 [illegible] Lamont [illegible] Justices
[illegible] Smith

False Imprisonment or
assault & battery — Lewis [illegible] Dalton & others def'ts
Gould for defts. pleads plea of gen. issue produced testimony to contradict the pltf's testimony on justification and requested the court to direct the jury accordingly.
By the court (all absent Gentlemen) the pltf. must fail in the action if the jury have proof of testimony sufficient to prove the justification. At the request of the testimony gentlemen proceed to judge — but it is the opinion of the court that the evidence of the pltf is no justification for the battery committed.

Slander — Judson vs Elmer — declares that defendant said of him "he is a liar and a thief to be sure he is" The defendant — defendant pleads not guilty issue thereon joined — & silent demurrer is raised to the plea — & the cause is set down for argument.

Then the issue joined on the issue to trial — & whether Dalton produced evidence under the gen. issue to prove the truth of the words spoken in justification. Smith (def't) for pltf offered testimony to prove the general character of the pltf to be good. Gould for defts objected to the testimony on the ground that defendant had not as yet made out a sufficient prima facie case. & was therefore incompetent to introduce evidence to prove the good character of the pltf in such case. The question was submitted to the court & they have never found any case where evidence of this kind was

admitted after the decision made by the other court. of course that report is not in point. The court in that case refused a motion based on this ground.

Smith (Justice) I am inclined to think that the motion must be refused. The affidavit upon which the motion is founded is wholly insufficient to warrant the granting of the order. There is no evidence of this kind received. The affidavit on the other hand we have no reason why in fact the witness should not be examined.

Edmund Kelly's motion in this case to set aside a verdict on the ground now under consideration has been refused and as it would open a door for the introduction of [illegible] and improper evidence if the motion for the evidence sought to be obtained

Mitchell (Clerk) I am informed that we have [illegible] similar kind of the affidavit [illegible] with the [illegible]

Ejectment - [illegible] and also [illegible] plaintiff [illegible] and also [illegible] appeared in person that the [illegible] to the [illegible] notice of trial [illegible] to the [illegible] motion - [illegible] the [illegible] plaintiff [illegible] the [illegible] will dispose of his [illegible] estate and [illegible] will had but this [illegible]

It appeared in evidence that on the 27th
on the 2 Dec. 1862 Hutchens executed a deed to Simpson the
land in question – & delivered it to Ewen Cameron to keep
words to this effect & such & such matter me deed: deliver it to deft Simpson
but if I should call for it I must have it

[illegible] was marked [illegible] All
decisions were [illegible] in writing [illegible]
[illegible] Simpson [illegible] the day
[illegible] Simpson [illegible] in the
[illegible] Simpson [illegible] Simpson
[illegible] Simpson [illegible] Simpson
[illegible] Simpson [illegible] Simpson

[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

Assumpsit — [illegible] and offered in evidence a [illegible] this day received of J.D. 12/ $ which [illegible] J. Smith objected to this evidence and argued that the action was incebitatus assumpsit and that the writing stated was a special and ought to have been declared on as such according to the law for declaring on common notes of hand. The court say the decided last term where an action was brought on a due bill the contents of which were declared by filling up a blank declaration on a common note of hand — The court I say decided that it was a special and well declared on in that form.

J. Smith for plt denied that the action brought was indeb. assumpsit — the intention of a special assumpsit is not that the contract declared on should be written but that the terms of the contract & the consideration & promise be stated in the declaration. In this case the plt does not merely state that the def became indebted & in consideration thereof promised but states how he became indebted & that he actually did promise &c.

Bent says he contends that this writing is not a specialty according to the sense in which the term is used in this rule. (ie) that it is not such a writing as by our law must be declared on as being in writing. A specialty as the term is in this rule used is an instrument — the consideration of which is to run behind the contract & not otherwise but here the consideration — or the term

[illegible] stated

[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

Fresh [illegible] [illegible] [illegible]
that [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] the distress [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible]

[illegible] [illegible] [illegible] [

[illegible]

[illegible] original proprietors [illegible]
[illegible] entered [illegible] adjoining [illegible]
individuals - [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
road. The original proprietors [illegible]
Lines Dibreisin - & for argument sake that it
[illegible] [illegible] [illegible]
proprietors to selling their land [illegible]
was [illegible] [illegible] [illegible]
the road adjoining. - Here McGould [illegible]
stopped by Judge Swift the pleadings [illegible] -
decided says Judge Swift - about three years ago in
New London County - & Vid. The heirs [illegible] that
the original proprietors had no right [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] proceed further in the
argument - He had [illegible]
whereas he did not recollect [illegible]
[illegible]
Swift C. J. - Brainerd agreeing - I rather think
would adhere [illegible]
upon the ancient [illegible] - without leaving [illegible]
doing in a manner [illegible]

and by the Court [illegible] Brainard — whether the suit was [illegible] ter of public notoriety — or whether the def[endant] knew or did not know it was sold — is totally immaterial. [illegible] evidence of [illegible] vendee-after the sale — is not an evidence of fraud — merely but it is a strong fact — and the only question that can arise is whether Hart died or did not continue in possession.

Verdict & Judgment for Pltf. —

Newhall-v. Norton — Assumpsit — [illegible] Norton had waited upon Mr. Newhall on the [illegible] agreed by the parties that Norton should have [illegible] for the amount of his account — Norton was an inhabitant of the town of Lincoln — Mr. Newhall resided in the town of Boston — Norton was not obliged to go to Boston to receive the money — Verdict for the Pltf. — Norton [illegible] Boston — Norton — Newhall — [illegible] Upon this the question arose whether the Pltf. should have interest — or not — after the sum was due — Norton [illegible] Abigail or her daughter — She ought to be liable as an executrix the character of Notice for the

[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] Dot in point of locality

on the merits of the question - Benedict & Lord, for Defendt argued that the consideration - one cent per acre for the land - yet the circumstances attending the conveyance were indicative of fraud & in fact the original conveyance was fraudulent no after transaction between the parties would make it valid It appears by the testimony that the consideration was inadequate - & that Bruce trusted between brothers & did not further consider. This being established - the fraud in the conveyance takes the whole out of the stat. of limitation. - otherwise 15 years peaceable possession would give the deft a title - However it is doubtful whether - had there been no fraud - the deft could have acquired title by exercising acts of ownership as appears by the testimony

But Bacon & others for the deft said that the stat. of limitation always runs where there was an adverse possession. If the deft. had gone on and turned out Bruce each & each - it is clear the possession would be adverse & the stat. of limitation would run - But the deft. acted more upon the principles of humanity - he entered peaceably, & & deed & has ever since maintained peaceable possession by the consent - the act - or licence of Bruce - (see Root vs Ives) where the son built a house upon the father's land under his licence & held 15 years peaceably - gave him an indefeasible title - & a similar case in Root - & a man will lend & another the grantee after 15 years has. may hold as. all the world

The Stat. is a beneficial one – it tends to prevent men in their profusions. But it is contended that the conveyance was fraudulent – that the consideration was inadequate – It is why did they not petition to take the purchase but the consideration was not inadequate – it is agreed that 2 £ had been paid for it – that there were a reversion of the land – but it is to be observed that the land was at that time of small value – one of the jurors who lived on the Heath – is acquainted with the rise in the value of land for 20 years last – it has increased 10 times & twenty times its value – The whole of land is not large – the Captain could almost screen it if he should lie down upon it.

Smith Ch. J. in delivering the opinion of the Court said that if a man enter into another land under a lease the Stat. does not run in his favour – But the fraudulent transaction here is sufficient itself to keep the Stat from running in favour of the deft

Verdict & Judgt for Plff

782

Superior Court Haddam Dec. 1809
Wednesday. — Ejectment — Northam v. Hall
It was admitted that the deft was in possession
the Plt claimed the land in question by virtue
of an execution levied on the last of the year
1805 — Their executions were taken out against
Job. Doan who it is was admitted formerly owned
the land. The Deft claimed the land by virtue of
a deed made on the 3d of May 1806 — prior to the
time of the execution — It appeared in evidence
that on the evening of the third of May 1805 Doan
being considerably involved in debt made out Deed
of all his real estate & bill of sale of all his
personal estate to one Griffith — the next
morning at six o'clock he went to the town clerks
had his deed recorded — enjoining on the town clerk
not to disclose the fact of conveyance. Doan as
it appeared considered his indorsers as the most
worthy of his creditors — He repeatedly told them
that if any property was left after satisfying Mr
Griffith — they should be paid first — He often said
that he hoped there would be property enough to
pay the whole of his debts. — Doan continued in
the possession of the premises a while —
Dewey for the Plt — argued that the circumstances
of the conveyance exhibited manifest badges
of fraud — The Grantee made a universal use

all his goods — He remained in Motherwell at
the sale — & he said we [illegible] in a very
irate manner. [illegible]
strong & [illegible] contra — argued that it was no
fraudulent conveyance in the hands of [illegible]
[illegible] & the Act are applicable and
extend to property not [illegible] property. — In the
case of Belmore & Belmore — it appeared in evi-
dence that all the [illegible] were conveyed to a wife Trustee & the
deed was lodged with the Town Clerk [illegible]
allowed the record — & there was without question
knowledge of the Trustee who was entitled in law
of the Grantor — The Sup. Court [illegible] set
aside the conveyance — It appeared in [illegible]
that the Grantor ~~Mortgagor~~ owed him Trustee about the value
of the land — & in that case evidence [illegible]
that [illegible] was [illegible] to [illegible]
Judge in reply said that the case [illegible] went upon the ground of a bill [illegible]
a mere [illegible] [illegible] [illegible]
[illegible] The doctrine of the Judge [illegible]
was to be taken & was that in favour of
the Grantee of reasonable [illegible] evi-
dence — proof to [illegible] [illegible]
[illegible] [illegible]

[illegible] — [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible]

[illegible] [illegible] [illegible] [

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Webster. They stated that he did not remember whether Caitlin made any reply when he was interpreted to. There — However the impression upon his mind was that Caitlin said he would have nothing to do with the land — Caitlin he said gave no advice nor direction how repairs should be made upon the house — It was his impression that he himself had not charged the repairs to the tenants. — To the 1st question objected to — it was a matter which Webster could be certain — it was not a matter of opinion — so that he could testify as to his belief or impression. Daggett in reply said it was customary for witnesses to testify as to their belief & he never knew an objection made before. G. Schmitt, Justice objected to, inasmuch as such expression — Schmitt, Justice said he thought the witness might testify as to his belief or impression The question however ought to be put so as to know whether he did charge it — not whether his impression or belief was that he charged it. Reese Griffith said in order to cause a man to testify as to his belief — (1) where it was mere matter of opinion — but here the fact must have been ascertained by the witness — it was a matter of opinion — There seems to be a kind of middle ground in this case where the witness may testify as to conversations, not fit to call. — Sheldon Morris, Justice said the question when Judge Reese objected to, was as to Webster's

Gentlemen of the Jury — It is admitted that the land was originally owned in Maine — That it gave a deed of it to Webster & Catlin merchants in company — that the land was mortgaged back again by a deed executed by Webster — to Webster Catlin merchants in Company — & that the Mortgagee in mortgaged possession. Now the law is so that a conveyance of real estate is not within the scope of a copartnership transaction. — If Catlin took any part of the land by virtue of the deed from Bigel & Webster & Catlin — Webster could not convey it back to Mortgagee unless under a special authority, which is not contended for in this case — The general authority of being a merchant in Company is not sufficient The court are of opinion that there is upon the face of the deed from Bigel & Webster & Catlin a presumption of assent on the part of Catlin — & that the property did vest & become the property of the Partnership & therefore the Verdict must be set aside. The first inquiry then is whether Catlin actually assented — to determine this you will have recourse to the fact to decide whether the acquiescence did dissent or not — & you find that the silence of Catlin may be equivalent to express dissent as the case may be did dissent then you are to go no further but to bring in a verdict for the deft — but on the other hand if you find that he did not dissent then there arises another inquiry. And that is — whether there was on the part of the deft an actual notice or with a knowledge adverse holding — For the testimony in con-

cannot bring an action of Covenant against
another until the Rent reserved
by the Lease is due & the Covenant
will not amount to a Release untill
the Rent is due & unpaid — But
if a Man grants an Annuity
by Deed & covenants to pay it
half yearly the Grantee may
bring an action for any half
year as it becomes due & unpaid
by the Grantor — Action
upon the Case — Assumpsit —
Debt — Covenant — Trover —
Trespass — Ejectment —

Nov. 3rd

Note the Jury had prepared a Verdict for the
Account & Book debt — Joab Hall vs Smith & Child
Deft brought over the Account — & then pleaded that
the Plff & Deft had on such a day made an agree
ment — that the Plff should bring home the
timber and the Husband his Waddletown & such
a day — & that the Deft should pay so much in Cash
& so much in money &c
The timber as it appeared was all brought but not at
the day fixed — The Plffs charges as appeared upon
oyer were for the timber delivered —
Demurrer to the plea —
Mr Thorne for Plff had not time to come in
on this Day to argue the Demurrer to the Defts
pleas — tho they had entered into a special agreement
&c — by reason of the Illness &c
of Mr Buttler — for and all agreed to different days

Trial of seamen — bringing book at the
assizes — this was an indenture entered into by
the parties — that was an act of the legislature
containing conditions which the seamen agreed
bound themselves to observe — this agreement contained a
complete remedy — the party had no right to bring
his action upon it. 4 Bac. Ab. 1st Debt — 3 Salk. 5 — 183 — 2 Term 34 —

Judgt arrested. —

Petition for a new trial — Strange.

The Defendant stated that new testimony had been discovered — but no affidavits were produced — The Defendants
objected — because there were the same witnesses
as were produced on the former trial. The Court
then can now testify what on the former trial
they did not testify — but they might have testified all this at the former trial as well as now.

Petition not granted.

April 9th 1810 — Before C. J. Thomas — Thos Williams
& Wife was an action on the case — stating that the
Defendant so negligently managed his team that the cart and
upon broke the Wifes chaise — It appeared in evidence
that the Wife as he was going up a hill in Meriden met the
Defendants team (a yoke of oxen & horses) the Defendant walking about the first
end of his cart (being loaded with wood) — the land on the left
side of the cart was steep — the Wife attempted to turn out but
his carriage run back ag. the team — but not so far back as the
middle of the path — the other side of the path was a bank equally
steep — but the fence within a foot of the path — in order to turn off

No time was alledged when the injury happened —
Huntington said there was matter of substance — motion
& a rule allowed without costs — granted —
Jury admitted that case was the proper remedy
& as to the infancy of Deft was no excuse —
Issue for plff — judgt pro Deft —
Clarke & Warner pro Quer — Whittlesey & Huntington pro Deft

Middlesex County — Superior Court 31st July 1810
Swift Ch. J. Trumbull & Brainerd Js.

Pratt & Williams } Trespass on the Case —
The Plff brought his action upon the 5th
section of the Stat. of U.S. respecting patents —
The Plff declared that he had made valuable
improvements upon the machine for making
combs — sawing the teeth with a smaller circular
saw — pointing them — & polishing the combs —
& in the method of bringing the combs upon the saws —
— That the defendant in violation of the Plff's patent
had used & improved a similar kind of machine &c
The Deft relied upon evidence that all the improve-
ments alledged to have been made by the Plff &
for which he had obtained a patent were known &
in use before the Plff obtained his Patent or used
himself (Note The Plff was assignee of John. Pratt patentee)

The Dft offered Phin. Pratt the patentee as a witness to show how he made improvement &c. Objected to by the Deft counsel — did not wish on the present occasion to go to Glastenbury for the purpose of discovering how a McTryon's machine was constructed — Objected to Thomas & Ingersoll, ex parte — He cannot be inquired of how he obtained a knowledge of similar improvements The question ought to be whether or not he (Phin Pratt) knew of similar improvements — Daggett & Clarke contended that the inquiry was prop. — The means one has of obtaining knowledge must be shown or it is impossible in many cases to show knowledge — and altho' Swift dissenting — it is sufficient to inquire whether the Patentee had knowledge without showing how he obtained that knowledge — — Doane was called the Deft to relate what he heard the Plff say — Doane was about to declare that he heard the Plff say — that he (the Plff) went to Glastenbury to get some castings, &c. — that he intended to get a pair of patterns, &c. — that he got into the shop while the workmen were at Dinner & saw the whole of it — Horner objected — & relied upon the decision of the Court just made — Deft counsel unanimously admitted ——

Whitney was called by Deft. to prove that ivory dust was & had been for a long time used in polishing ivory — He was about to state that he heard Mr Reed say he (Reed)

had been every case long before — Ch. B. Horner
This is hearsay testimony — it is not the best that
could be had — Reed himself should have been
produced — See per curr. admitted Brainerd
dissenting — —

Horner argued said that the Secretary of State
& Attorney General have decided that Pratt had made
an improvement upon the comb machine & that
this improvement was a valuable one — & that
the decision was conclusive — See non allocatur
for the Court in charging the jury said that the
patent so obtained secured to the Patentee all
the discovery or improvement he had made
but that the patent was no evidence & a fortiori
not conclusive evidence that any new discovery or
improvement had been made — or that such dis-
covery or improvement if made was valuable.

Verdict & Judgt for Defts

Mather & Pratt } Motion to enter up judgt vacating Pratts Patent — granted —

This was a writ of Error from a Justice of Peace
Bonds of precaution & strictly upon the writ of Error were
not certified in the hand writing of the judge who issued
the writ of Error — plea in abatement for this cause
was tried & issue found for Defts — a Justice of
the Peace must record the record & his minutes to
amend by — See Mc Allister —

Hungerford & Wife } Writ of Error —
Wiley }

Hungerford was the Captain of a Militia company in Westchester — Wiley was said to be a subject of Military duty — Hungerford distrained & sold for the fine of absence — the goods distrained were sold at auction — Wiley brings his action of Trespass before Spencer justice of peace — stating that he was exempt from military duty — Deft pleaded the jurisdiction of the justice — stating that the Captain Col. had exclusive cognizance of the question whether exempt or not. That they had said he was not an exempt which was conclusive Replies Demurrer This plea was overruled & a resp. ouster given. Issue pleaded — The Court found that the deft was guilty on the ground that plff was an exempt — And now Hungerford brought his writ of Error — The plea to the jurisdiction of did not traverse the allegation that he was an exempt — Judgt affirmed — All to the Ct. declared that Military officers had sole jurisdiction of the question when an exempt was sufficient that ~~the~~ person alone was excepted & consequently the cause of the exemption was permanent — That the plff may say he is not a subject of Military duty, the Ct. extends to such only as are subject to Military duty —

Page &c

Braddock } Debt on judgment in Hustings Court.

Deft pray'd oyer of the record & proceedings &c in which it appeared that the parties were present & were heard - that Braddock was the Plff - (action Trespass) that he was nonsuited upon appeal to this Court - that a Bill of cost was taxed as Braddock & judgt rendered therefor - The Deft then pleaded that prosecuted the action without lawful authority to appear therein & concluded with a verification - The Plff replied & traversed the allegation that the suit was carried on without competent authority & concluded to the Country - Deft demurred specially assigning for cause &c - The Plff had traversed a negative &c -

Homes in support of the Demurrer said that tho a party might take upon himself the burden of proving the negative or throw it upon the other party in some special cases - yet this was within the gen. rule that the party leading the issue to the country must deny a fact - & not affirm what is denied by the other party (vide Lofft) - that it was competent for the Deft in this case to deny the authority of appearance of in the first action - the record of the Court in Mash. being only prima facie evidence of authority of appearance - Vide Robson & Ewin 15 M. & W. 62

Whittlesey for Plff. said that this case was within the gen. rule that a party may take upon himself the burden of proving the negative — tho he very much doubted whether the Court might not consider the plea of the Deft a negative plea — At any rate admitting it to be a negative plea — it is saved by — when the Deft prayed oyer of the record & pleaded I take it — the record &c become a part of the Declaration that the presumption is that the parties had authority to appear — Indeed I apprehend conclusive of that said If so it is equivalent to an allegation in the Dec. &c that the parties had a right to appear &c The plea of the Deft then upon this view of the case would be no more than a traverse of particular facts in the declaration — without introduction of new matter. The consequence is that the plea of the deft is bad — It should have concluded to the Country — The Deft has demurred — but it is a special demurrer & reaches the first defect upon the record.

I take it says he the record of the Supr. Court is conclusive that the parties did appear by competent authority — Huberts case — Stellata Cum. Pro. 8. 531 & this tho the judgment of a court in one state is not considered as alone judgment in another.

Swift in delivering the opinion of the court said that this case must be governed by that in Term Reports

The question whether the judgt in Mass. was conclusive - & to be considered domestic could not arise here — that the plt should have left the pleadings open to be ~~altered~~ denied by the Deft & thereupon judgt for the Deft

Pleadings amended & the case continued —

Superior Court December Term Middlesex

Present — Mitchell J. Trumbull & J.B. Smith, Js.

Churchill v. Watson — Action of Trespass —

This was an action of Trespass — The writ was served & the action in the writ — The Declaration also that the Defts took away the Pltfs Mast with sundry other & appropriated it to their own use — whereby the Pltf was obstructed in sailing his vessel & hindered & delayed for three months & his damage 2000 $ — The Pltf offered testimony to show special damage occasioned by the obstruction & delay — Daggett & Clarke for Defts objected — If I undertake to deliver at the Wharf at Middletown Timber in a quantity of rigging for a vessel & such articles fail whereby the vessel is hindered & obstructed in the ice — it has been decided over & over again that the writ cannot point out an instance of special damage — it is too remote — much less in this case where the special damages are stated so generally — The Pltf does not allege how much he lost by the obstruction & delay — nor in what manner it occasioned him loss — If he would prove that vessels did not sail after delayed so long — this should have been alleged — even if he had alleged special damage the writ insufficient certainly — that the court would not go into inquiry — Actions of Trespass per quod

[illegible]

& Thereupon it was ordered that the verdict of the jury should be amended & extend to the whole damages & thereupon —

Trumbull J. I would also exclude the testimony — If you may in any case under such action show special damages, you cannot here because the declaration is deficient in alledging the special damage. —

(Hitchcock Ch. Just.) I have no doubt but in cases of this kind special damage may be given in evidence where special damage is properly & sufficiently alledged in the declaration but this is not the case here & I would therefore exclude the testimony. — Verdict for Plff 40 $

Motion for a new trial &c. — question reserved for the opinion of the whole Court — In pursuance of the Supreme Court of Errors this judgment was reversed — the case was remanded & a verdict found for Plff 5. $

Coleman vs } Superior Court July Term 1811
Wolcot } Action of ~~Covenant broken~~ Case

The Defendant had covenanted to procure for the Plff & another certain lands in Virginia for such a sum of money – it was an indenture of two parts – the consideration money had been paid – the Plffs partner failed & became a bankrupt & then gave a general release of the covenant to Wolcot – On the first trial of this case it became necessary to prove that the indenture was lost by time & accident. – The Plff himself was by the Court admitted to testify as to this fact – The cause was carried up to the whole court by motion for a new trial & a new trial granted on the ground that the Plff could not testify as to the loss –

Hazard for Plff was about to read the Deposition of – – – & that a writing therein contained was on a certain trial in Mass was permitted by the Defts to be read as a true copy of the indenture –

Gould & Dagget for Defts objected – because they said it was not competent to introduce a copy until loss of the original was proved – per Curiam admitted This was therefore offered now as a copy – but objected to – because the loss ought to be proved first – & so said the Court. – – The Plff in order to prove the loss in

Produced witnesses & deposition to show that the Inventure had been seen in the possession of Pltff Partner & the Pltff partner had refused to deliver it up — or to give their deposition as to the dft —

Per curiam the testimony is insufficient & nonsuit a dft —

Motion to continue in the purpose of giving the Pltff an opportunity to file a bill in Chancery against the dft to compell him to deliver up the inventure to be used in this action — Per Cur. rejected

Motion to postpone the cause for a day or two for the counsel to consult on the propriety of amending The Declaration rejected — Action Withdrawn —

Russel vs Mann & al. } Trespass

The Pltff in his declaration stated that he was possessed of a pasture lot & lying in Middletown that the Dfts had by reason of their mill dam flowed the water back upon his pasture &c — The Dfts claimed a right so to do by immemorial usage. — The dam had been newly erected within six or six years — made tight & higher than before — For about ten years previous the dam had been worn & washed away so as to leave the pasture good — & before the erection of the new dam the pasture had not been flowed in the summer time except when

a shower of rain had lately fallen - & that it was said not to injure the pasture. -

Dagget for Defs said that the Defs could not claim immemorial usage - nor grant - because the Plff had for more than fifteen years next previous to the erection of the new dam - by a free and uninterrupted flowage acquired a complete title

The Jury found a verdict for Plff -

The court returned the Jury for a reconsideration & among other things told them that the question was whether the Defs had used the water - or flowed the water as it had always been flowed or used -

The Jury again found a verdict for Plff which was accepted. —

Note at the next term a similar action between the same parties was tried & upon a return of the Jury for a second consideration they brot in a verdict for Plff —

December Term Haddam 1811

Court — Reeve. P.J. Baldwin & Ingersol. Js.

Ervin vs. Hocking — Book D. 61.

This was an action on book for goods delivered Deft's wife in the absence of Deft — The Plff claimed that she had furnished necessaries & the question was whether they were necessaries — The Cause with the evidence was committed to the Jury by Judge Reeve — Gentlemen of Jury said he if you find that the articles were necessaries & delivered to the Deft with a view to be paid for them & they have not been paid for then you will find for the Plff — but if you find that the goods were not delivered or if delivered were not delivered with a view to be paid for — or if delivered with a view to be paid for were actually paid for — then you will for the Deft

Verdict for Deft accepted per Cur.

Churchill vs White — Assault & Battery

In this case the Deft was charged with hurting the Plff with a hoe — It appeared in evidence that the Deft with a hoe on his shoulder went to the Plff in Deft's shipyard in Chatham — that after some altercation the Plff stepped back & took up a rake 6 or 7 feet long — doubled it holding the two ends in his right hand — in a threatning posture — ordering him the

Defft drove his rifle to ground – Defft released arms
& was not to ground but to play – Defft then
threw over the bite of the robe apparently an attempt
said to entangle & take from Defft his hoe – Defft disen-
gaged his hoe & immediately struck the Pltff upon
the head with the blade of the hoe & brought him
quite senseless to the ground – for this beating this
action was brought –

Whitlesey for Defft offered testimony to show that Pltff
had previously to the battery offered a premium
to any one who would take his (Defft) life –

Bosmer for Pltff objected & said it was improper to
show any threats except such as were made im-
mediately preceding the affray & cited Eldridge's
trial & a criminal case at Hartford –

Whitlesey said the evidence was proper in order
to show what Defft had reason or might have had
reason to expect from Pltff when the affray began
& when the rope was held in a threatening posture
by the court – The testimony is inadmissable
the threats do not appear from the statement
of the counsel to have any reference to the affray
that happened – there was no connection between
them – Pltff did not go away from his ordinary
business to find Defft nor did he have any instru-
ment calculated to put those threats in execution –

Verdict & Judgment for Pltff 500 $ damages

Daniel White vs Christianchic - Thomas Duane Esqr. Atty.

In this case the Plff charges the Deft with having taken away grain that was not attached

It appeared that Robinson & Ames formerly owned a piece of ground containing about 20 acres - In the year 1798 Robinson & Ames sold to the Plff 14 acres from the East end - bounded on the North by - - - On the East by the highway on the South by highways & on the West by our own land - The point in dispute seemed to be what direction the west line should run - It was in proof that there had been a hedge or mud fence running across the lot in a line not parralel with the west line - nor East line - nor perpendicular to the North or South lines - but which left about 14 acres to the East of it. - The Deft in the year 1809 purchased the remaining part of the 20 acre lot & was bounded on the East by Daniel White land The Deft claimed that Plff west line must be parrallel with his East line - no boundall being mentioned in the deed to Plff - The Plff claimed the land as far West as the hedge or mud fence & so far it was proved the Plff had been in possession from the date of his deed - The deed from Robinson & Ames to Plff covering all Deft supposed the land from which the grain was taken was included by Deft -

Whittaker for Pff objected to admission — Pff had
not acquired a title by 20 years possession
of this land for 11 years or more since he
was — the deed from Mr Hamner & Dr Grant
gave title to Pff and in possession only in 1809 The
deed therefore as to this land is void against the
Tenant.

Hamner for Deft said that the deed is void as to
any part if Trustees must be sued in ejectment
& warrant be void as to the residue the Grantors
were in possession part of the land — Pff title
were void as to Deft title yet it may
be so far valid as licence to enter & improve

By the Court The deed is void as to Deft title
Deft title that part which Pff had been in pos-
session of — but yet it is so far valid as to give
Pff a licence to enter & improve (ie) provided the
deed shall warrant the land —

Whittaker for Pff offered testimony to shew that the
Grantors of Pff had at the time of the deed given
but the Pff in possession of the land by metes bounds
& courses as the lodge lines

Hamner objected — any parole contract respecting
land is void — the metes bounds are not described in
the deed — Whether at the Grantor of the Pff had at
the time the deed was given gone round the land &
shewed the Pff the boundaries — this fact must be shewn

by parol evidence to the purpose of varying the
true intent of the Deed within the description
of the deed -

The witness who was introduced swore that two or
three years after the deed was given & Pff had
an conversation with the Grantor, Pff - the Grantor
among other thing told him that White the Pff had
improved just where he (the Grantor) intended he (White) should
Hosmer objected & said this was not the testimony the
Court adjudged to be admissible - this is testimony of
a fact that happened two or three years after the deed
was given - Per Cur. It is admissable not to give the
Pff title but to give him licence to improve -
Hosmer for Deff offered the Grantors as witness to
show that nothing was said by Grantor at the
time the deed was given limiting the extent of the
land - nor pointing out the metes & bounds -
Whittlesey for Pff objected - these men are interested
the Court have already said that Deffs deed by which
he pretended to claim the land in question was void
& the Deff would have our western line ~~limited~~
parallel & one inches - a space is left between
which no one but the Grantors can claim - & this
is the very land in dispute so that the witness
by testifying against the Pff will establish the
title in themselves
Hosmer in reply said that if the witness be interested

in a suit M'F should ever come into possession
of this disputed piece of land - they would be
estopped by their covenants from claiming it as
ag. the Defs. - the Grantor therefore could not
hold the land - & all the D. & a piece of land
that I have not title to, so that as no one title
& attempted obtain title & possession it is not com-
petent for me to say I had not title at the time
I executed the deed - I am estopped -
The Court were divided & in much doubt & agreed
that the witness were inadmissible - If
I could be satisfied says Judge Reeve that the tes-
timony of these witnesses would not or do establish
title in themselves I should be willing to admit
it - they appear to me to have an interest - On the
whole the court said they would let the witness
testify & if the testimony proved to be material they
said they would consider of it further & correct it
if necessary - Baldwin - was for admitting - No nothing
was said afterwards on the subject but it seemed the
evidence was of small consequence -
Reeve. CJ. said in charging the jury that if nothing
else were to govern the course of M'F west line but
the deed - the court were of the opinion that it
must be parrallel to his East line - but if the jury
had other evidence to judge from it might alter
the case - Went further - & from the evidence

[illegible] on the part of the Defendant [illegible] and [illegible] [illegible] the Defendant [illegible] [illegible] [illegible]

Webb vs Ely & al. —— This was a petition to redeem land mortgaged by [illegible] & by Mote & al assignees of Ely & al. — The Petitioner claimed by virtue of an execution The Petition stated that such & such land was levied upon — appraisers appointed & sworn — the appraisal of the land — the amount of the mortgage debt — by which it appeared that the mortgage debt & interest amounted to more than the whole value of the land The Petition stated further that the appraisers went on to ascertain the rents & profits received by the respondents (they having been in possession about 5 years) & the betterments made on the premises — The Betterments ($500) being added to the ~~appraised value~~ mortgage debt & costs ($8.900) & the rents & profits ($1.950) being added to the appraised value $8.900 — it appeared that there was an equity of redemption of the value of $600 & upwards. Set off on the execution — Respondents demurred — Argued for respondent said the appraisers had not power to appraise rents & profits or betterments & that not within the scope of their duty Hommel (contra) relied upon the case of Pendergrass & others in 1st Dana rep. — But besides in this case nothing could be set off in favour of the betterments & accordingly the Court said that the estimating of rents & profits & the was not conclusive

Superior Court July Term - Middletown in 1812.

Court { Swift P.J.
Trumbull
N. Smith

East Haddam vs Haddam - Assumpsit

This is an action to recover the expenses of a pauper. The father or mother the reputed father was a negro born in Stonington - The pauper was born of the Atlantic tribe in - time - East Haddam claimed that the settlement of the Pauper was in Haddam - & of course ought to provide for & support. This depended upon what place the parents had a settlement - The weight of the testimony was that both the Father had a settlement in Haddam - No direct testimony was produced showing that either was ever married & where the mother - The general reputation of their being & living as man & wife - The witnesses differed - The witnesses differed also as to the settlement or place of residence of many -

Swift P.J. to the Jury - Gentlemen if you find both had a settlement in Haddam - that he was married to mercy - & that the Pauper was the issue of that union you must have a verdict - & you are to presume a marriage if they held a general reputation & manner

But if they were not married yet if Mercy had by residence gained a settlement in Hebron the Issue [illegible] will follow the settlement of the mother — & the Court are clear & [illegible] that an Indian or mulatto in this State may gain a settlement as an [illegible]. They are not alien nor denizen — & require no act of Naturalization & make the [illegible] citizens

Verdict & Judgt &c. Pltf.

Newberry v Bulkley & al. — Ejectment — Pltf claimed land in Middletown by virtue of the Loan of an execution — ag. Gersh. Bulkley — General issue was pleaded — The Execution having been read it appeared that six elevenths of a certain lot of ground was levied on — Appraisers appointed — sworn — & the land appraised — but there not appearing enough besides the Execution the Judgment ran on that — Then levied &c on an acre & a half &c — & requested the appraisers aforesaid to appraise &c — which was done & set off on Execution in part —

The Defts produced a deed from German [illegible] prior in date to the levy of Execution — to which Pltf objected stating it was fraudulent — & Defendants bond & recovery was also produced by Defts

even date with the deed — but that were executed
~~[illegible]~~ It appeared that the declarance was not
in fact executed untill a day or two after the
deed was executed — & not delivered to Bulkley un-
til a fortnight — It further appeared
that at the time the deed was executed it
was agreed by the grantees that there should
be a defeasance executed & that the bond was
drawn that evening &c — but not executed —
[illegible] that was the deed given for the
same[illegible] Dr Thurman & Metcalf)
Marshall Just. do you not conceive there may
be a difference between a parole agreement
at the execution of the deed that
there shall be a defeasance executed immediately
& an agreement that there shall be one executed
at a future time — a parole agreement at the
time that a defeasance shall be immediately ex-
ecuted may perhaps be good as between the
parties & an agreement that it should afterwards
be executed not — & do not the
following distinction will affect their opinion — but
it does appear that the defeasance is not executed

appraisers - [illegible]
On their joint [illegible] out of the
sale would [illegible] in
for a new trial the [illegible]
and direct the execution whereupon
the parties were heard by the
[illegible] of the Court in Banco Rolls.

Denny's Appeal from [illegible]

In 1775 before the declaration of Independence Mr Denny & all his family except Elizabeth were in the United States of Amer. - At that time Elizabeth was a feme covert - She & her husband came over in 1792 - after the treaty of peace with Great Britain - Mr Denny died in 1805 - leaving real estate to be distributed among his heirs - [illegible] to be distributed nothing to Elizabeth & [illegible] were taken - the Appellant claimed on the ground - first as being a citizen & second if not a citizen yet within the treaty of peace where it is agreed that the subjects of British Dominions in America & American subjects in Britain may be descendable devisable alienable &c &c. As the treaty of peace between Great Britain & America Mr Denny could not have been a British subject - he was an american citizen - and being such

it will remain so as that Elizabeth if she
was a subject could not claim any
part of the property devised to the heirs
of American citizens (as being that at the
death of the testator Elizabeth is not an american citizen — tho
Elizabeth might have been in fact prevented
from coming to their country with her father
yet whether she was prevented or was not is a fact
incapable any more than if she had always
remained simple — & she being only a Protestate
could not claim any right as
not at any rate —

Dall & al. vs Dall } writ of Error from Justice Hill Taylor

This was an action of trespass brought
by Dall against Dall for entering a pew in Religious
Meetinghouse of which the Pltf alleged that he
was seized & possessed The trespass was charged
to have been done on a certain Sunday during public worship
that the house was devoted to public worship &c —
The Defendant in the Court below demurred — Judgt

was in the court below rendered for Defft — Deft brings this writ of Error — & for cause assigns (Daggett & Clerk Counsel) that trespass would not lie for entering a pew vi & armis — it must be case — see Term Reports

Per Cur. It is true that trespass will not lie in ordinary case where a meetinghouse is built by a religious Society for public worship & the pews are distributed yearly to accomodate the people — but here the Defft avidge that they were seized & possess of the pew — Meetinghouses are frequently built & owned by individuals — as such & not in a corporate capacity — they may own the fee simple When the face of the writ it appears that the Defts did own the fee simple

Swift dipenting said that it did appear that this house was dedicated to public worship & that too at the time of the trespass complained of. Property in this situation could not be considered so absolutely mine the control of Defts over it allow this action — the pew was to be regulated by the people who attend publick worship there —

Judgt affirmed

Error Court December Term 1812

Mitchell Ch. Just
Baldwin
Ingersol

Auditors
Mann — December

[illegible] Mann [illegible] Auditors appointed — motion for Auditors report of Auditors [illegible] Daggett

[illegible]

[illegible]

[illegible]

[illegible] agreed that [illegible] sea — the Defts objected — [illegible] testimony —— In Error cur. in Plen. Assumpsit

The Court admitted the testimony — if it was proved that it [illegible] to show that the parties acceded & agreed that such & such acts should be performance — Verdict & Judgt for Plff —

Interest was allowed on the Balance after it became due

Rushell & Hann — Case for flowing &c

Plff claimed by purchase from Waddington

Waddington claimed by a warrant from Henshaw

the Plff proved the original grant to Henshaw — Defts objected — but it was admitted & the warrant

Daggett for Plff said that the warrant excluded not both Plff — it was a question — not [illegible] — [illegible]

Hodgen v. [illegible]

[illegible] the personal property [illegible] to the payment his debts - and the [illegible] of the personal estate are not sufficient to pay his debts - The Court of Probate ordered the sale of the real property by the Administrator - Administration & will annexed - & that the personal property be paid to the Widow - The Plff being heir at law [illegible] appeal from the Court of Probate - brought this action of Ejectment - The point in dispute was a matter of law - Whether in this action the Judgment of the Court of Probate could be set aside - or whether the Plff's only redress was by appeal from Probate -
And upon the construction of the will whether the words rest & residue after debts, said devised was to be construed a charge upon the real being real estate - or whether the personal property given to the wife was the proper fund for payment of Debts -

The court in charging the Jury said the Court of Probate had competent jurisdiction to determine out of what fund the debts should be paid - it was a judicial act & not ministerial -

Verdict & Judgt for Deft -

Archibald H. Elliot
vs
William Hardie

[illegible]

[illegible]

[illegible]

[illegible] on the part of the
[illegible] and [illegible]
[illegible] after
the [illegible] - the [illegible]
[illegible] ——

Motion for a new trial — [illegible]

Rispel vs }
Mann } Motion in arrest [illegible] ——

Action on the case for flowing [illegible]

Three or four of the jurors pending the trial went and inspected the meadow - One of the Defts hired men showed them the bounds &c - These facts were stated by Pltf in his motion - verdict being for Deft -

By the court - let judgt be arrested - It is to be presumed that there was improper conversation between this hired man & the jurors as well as improper conduct on the part of jury in going to inspect the locus in quo

White v Cook Book debt

Several articles of charge were [illegible] struck out
[illegible] – it was proved that White had furnished the Defft
with this Liquor & sunk up into shoes & dispose of
them & the best advantage – the Defft to take one half
the Profits & Defft the other half —

Defft objected to this charge because it was not a
proper article of book debt – but must be recovered
in an action of account —

Per Curr. Let this article be struck out – The debt does
not accrue at the delivery of the Liquor – but the Defft
was bound to receive & account for the profits.

more than a year previous to the service of the Writ
but within a year from it date - & this was the only Nui-
sance attempted to be proved — The Defd objected —
The Court admitted the testimony - Bill of Exceptions was
filed — The Jury found a verdict of guilty & for the Pltf
& recovered the penalty & but no damages & against
the Defd moved in arrest of Judgt & stated that the
statute was misrecited — the word and between the words
three dollars and the words thirty four cents was omitted — &
the word Treasury used for the word treasurer —
It is clear the Pltf can bring the action in his own name
& in the name of the treasurer of the State of Connecticut
when it should have been in the Pltf name & the treasurer
of the town of Saybrook ——
Crosier the Defd now brought his writ of Error
Dagget & Clarke for Pltf in Error said it had been determined
that the stat of limitation extended to Qui tam actions
& of course this action is barred if the service of the writ &
not the date is the commencement of the suit — for the
words of the stat. made & exhibited - mean no more than
that the suit shall be commenced
And as to the misrecital — the English decisions & ours
are uniform - that if the party recites himself out of the
Statute by the words - said or aforesaid in reciting a public
Statute he shall be holden to an exact recital verbatim
and as in the third resolution there is a manifest misrecital
in joining the treasurer of the state in the penalty &

made lawful to the town

Bonnet for Debt in Error since the statute of limitation
was made intended to put an action after — it had
been one old breach of promise — the words
not specified mean the doings of the grand jurors before
enacted —

2 Bac Abridgt The English law not in more restrictive
than much related —

Mass. Ind. I believe the Com decisions on this subject were
not uniform thro out —

Dorr — There are many reasons why this should be re-
versed — specially in this County

The incongruity which Dagget complains of perhaps
it would have been better to have joined both the State
& the State at large or the treasurer of the town — but this
is no cause for arresting judgt —

In Certain Manifest Error — the writ may be exhibited
perhaps refer to an exhibition of a complaint & a petition
and warrant — yet there seem to be the same reason for
the statute applying to certain actions — & believe the stat.
may be so construed as to include them — If a man
shall commit a penal statute & immediately goes out of
the State & returns before process — his case I believe would not be
within the statute of limitations She may be brought up after the expi-
ration of time & came into the State — but otherwise
if he dies in the State — sufficient time after the commission
of the crime & the presumption that he intended to elude prose

Where a party undertakes to recite a statute in hac verba, when he does not recite it he shall be holden to an exact recital of it in the himself, & the slightest variation will be fatal — In these two exceptions the court reverse the judgt without enquiring into the error —

In estimating damages the Defts objected to allowing interest in the Court below because the Defts below should have demurred to the declaration —

Judgt given that as the Defts before the Justices had pleaded & issue & could not before the County Court go back & demur yet the opinion was the Court — however the Defts in Error then objected on another ground — that the County Court had not jurisdiction of the matter because they could not restore jds to the amount & therefore could not take security for more than $ 20. But the Court allowed costs from the beginning

L. H. Clarke administrator of Simon
Richardson vs C. A. Lord } Debt on bond —
The Deft pleads Richardson a bond to indemnify him - Richardson
assigns over bail to another upon appearance & the Deft
pleads non damnificatus — The Plff offered to prove damage
accrued since the Arrest action brought — on the ground of
assignment — Denied evidence of taking and administration to the
Intestate before the Arrest suit - Richardson not being
an inhabitant of this State — The Deft objected to
the evidence — Dismissable

Achilles Elliot vs } Prevail be obtained Plff in the execution
Achilles Hawley } & his office as Debts paid —
Motion in Plff's counsel to withdraw the Plff & Deft
agreed } the Cause having been continued now come } this
Plff offered the Deposition of the parties and
them it was known certified on the back thereof that a notice
for the Deft to attend had been read —
which was admitted

Superior Court Dec. Term 1813

Court v. Mitchell Trumbull & Ingersoll

State vs. Fisher Canfield } This was an Indictment in a Justices charged it have been committed with one Betsey Wright on the 21st day of June 1806. & the State did offer the testimony of the time charged — the second of the Prisoners offence — & stated that this was within the Statute of limitations — This was a prosecution upon a penal Statute — & prosecutions upon a penal Statute — or for crimes & whereby any forfeiture accrues to any public treasury are limited to a year — no forfeiture accrues in this case but it is a prosecution on a penal Statute & not within the exceptions — & By the Court — Let the testimony be admitted The witness then testified that on or about the 21st day of the witness saw Canfield with Mrs Wright in bed & The Attorney for the State offered & admitted to prove that Canfield was seen with Mrs Wright in bed & at another time viz a year afterwards —

Hayden for Prisoner objected — & said that the Indictment charged the Prisoner with only one offence — & this offence now offered to be proved could not conduce in any manner to prove an offence on the 21st of June 1806 — It is true according to the determination of the Court the Prosecutor is not confined to the day stated in the Indictment but may prove any one offence within 20 or 30 years

The rule is the same in Trespass — If a man is charged with only one trespass in a declaration the Plff may prove any one trespass within three years but cannot prove two or more even under the allegation of divers norma — And the reason why a recovery in such action will bar another action for another different trespass within the same three years is because nothing appears by which you can determine which trespass was proved in the first action —

So if a complaint for breach of Sabbath — if the complaint charges a man with a breach of one Sabbath you cannot prove him guilty of the breach of another Sabbath also — you may take either of them but not both

So if a man is charged with passing counterfeit money on a particular day — you cannot prove that he passed the same on that day & also on another day — you may prove one but not both

Trumbull J. said he knew of a case of this kind in Hartford County & this exception was taken & prevailed

Mr Horner for the State — said that the proof in the present case could not be like as to an offence committed at one time — All the acts of this sort which we may prove constitute in contemplation of law but one offence tho the acts of it were transacted at different times — many times offences must be proved by circumstantial evidence — Circumstantial evidence if the rule is thus strict it is impossible to convict any one on such evidence &c — By the Court in admissable

The Prosecutor then offered to enter a Nolle, pros. if the Court would discharge the Jury —
Mr Hopkins said the Jury could not be discharged — the might
enter a Nolle, pros but the Jury must acquit the Prisoner because
they have sworn to make deliverance &c. & of this opinion was
the Court (See Day's Rep.)
Mr Hopkins then went on with the trial — He offered J. Bachus
to prove the marriage of Betsey Wright — he could identify her
call the maiden name of Mrs Wright — Mr Hopkins then called
another witness to prove that Mr Jab. Wright & Betsey went away
from the witnesses house together & came back together & lived
afterwards as man & wife — Object'd to by the Court — inadmissable
Mr Hopkins asked the Court to give their opinion to Jury on the
sufficiency of the testimony relative to the marriage in their charge
to the Jury — The court charged the jury that if they found there
was no evidence of a marriage of Betsey Wright they must
find a verdict for the Prisoner — & that the opinion of the
Court was that there was no such evidence
The jury found a verdict of Not Guilty without leaving
their boxes! —

Superior Court — Mid[dle] County, July Term 1844

(State
(Simmons
(Baldwin

Plea not guilty — Issue

The indictment in this case charged that the prisoner was married on the 10th of April last in Glynn Mid. County.

Upon the trial the prisoner's counsel objected that the marriage was void because the prisoner was under the age of twenty one years at the time of the marriage — and that the marriage was void for that reason —

Upon the argument it was said that Polygamy was no felony — it was not known as a public offence in England — & our statute is in many things copied from and regarded as the law — indeed the whole law of marriage is derived from the English statute — and the English statute was declaratory of the common law

Mr Horner then offered a certificate of the Parish of St Bristol of the record made by Mr A. Backus of "the Marriage of James Wright with a person-name" "forgot — — the year was not mentioned but only 29th Nov. Taylor objected & said it was not admissable because the record was never made agreeable to the statute Horner said it was admissable as far as it went he acknowledged it did not itself prove the marriage but would help with other testimony to make out the marriage —

Curtis in reply said the Prosecutor could not call on a record in this way by parole testimony the marriage must be proved by a certificate or by parole testimony or by both but you cannot mend a defective record by parole

by the court — The certificate is received but — by our practice it has never been considered necessary to produce original proof to the record of the marriage — that is sufficient if complete — but if a defective record is the best you have it is not admissable

Writ of Error

An original action was brought on an officer's receipt & an execution claiming that the Deft was an officer that had received an Execution vs. Pltf that had never returned the money nor returned the Execution A Plea in Abatement was put in before the Court that the service was not made 14 days before the return day & this there was a demurrer to the Plea insufficient & ordered a respondeas ouster the parties went on to trial the Pltf obtained judgt against the Deft Defts bring this writ of Error to the Court

Manifest Error

Higgins vs Stevens Writ of Error

This was an action of Trover brought in the County Court in which there were four or five Counts - the article proved to be the same in all the counts tho alleged to be different & the value of the article in each Count under $20 - the damages were assessed for the whole amounted to 100$ & the demurrers were filed to 100$ the jury went to the Deft - Deft moved for an appeal - it was objected to - & the Court refused to grant an appeal The Deft brought this writ of Error & to the Court

Manifest Error

Index

Abandonment III 104-206-208-225

Abatement plea in III 249-296
" of Nuisance
" indictment

Abbreviation

Abduction
" of a child
" heiress
" ward

Abduction
" wife

Abeyance

Abjuration oath of I 138

Absolute

Acceptance of Will III 51-6-54-74
in the Interest III 56-82

Acception property by

Acceptance before Fact I 332 I 122

Acceptance after the Fact III 332 I 122

Accidents III 182-325

Accord & Satisfaction

Accrual action
Statutes I 71
Accumulative Statute I 30-5
Relation III 92

Ac etiam

Acts public
private
Acts personal
Action personal III 253-I
on Cont III 70
choses in

Action pleas
property in
real
in Writ III 81
Actual Seizin
Acts Legislative I 23
Actions

Adjoining County

Adjourn Court III 249

Adjustment - II 215

Administration durante minore aetate

Administration de bon. non

Administration - Ex.

Admiralty

Admission

Admittance
Adopted by Laws - III 13

Advertise

Adultery III 381 - I 114-1256

Advocate

Advowson

Affidavit

Affinity

Affirmance

Affirmation - false II 166

Affray

Age - III 99-156-7-239 - I 123

Agistment

Aiding & abetting

Air

Aldermen

Alias

Alienation by Execution

by deed

Alienation by Devise

Aliens - III 117 - I 103

Alimony

Allegation

Allegiance

Allodium

Allowance

Alluvion

Almoner

Alteration - III 165-438-6

Amendment - III 165-207 303-5 - I 24

Amercement - I 23

Amerce

Ancestor
Ancient lights - III 24

Animals property in

Animus furandi - III 409

revertendi

Annuities - III 101-140

Answer in Chancery III 6-441

Antient demesne

Apparent

Appeal - III 227-243-6-250-262-297-313

Appearance III 254-284
No-Y. - II 295

Appellee

Appointment
Appointment - II 218

Appraisement

Apprentice

Arbitrary

Arbitration III 221-245-8
Arbitrary
Arraignment
Arrest & bail in
Arrests III 267-346
of judgment
Arson III 383
Articles
Asportation
Assault & Battery I 176
Assembly unlawful
Assent— III 84-152
Attempt to commit
Attempt to commit III 16
Assessment
Assets
Assignee of Bankr.
Assignment of Effects III 29-
shares in action III 179-184
& terms
Assign
Assize
Assumpsit & extent
implied— II 9-4
Assurances
Attorn &c III 151-201
Attachments III 236-254-265-8
for contempt.
Attaint
Attainder III 336
Attempt
Attest
Attestation of deeds
of deeds
Attorney at law III 282-6-305
power of
Attornment
Audita Querela III 257-270
Auditors
Averment
Average III 34-140-201-4
Award
Auter droit
Auter vie — her
Authorities
Avers
Backing warrants
Bail above III 285
below III 279
common
of course
special III 282-285
to the sheriff III 285
to the sheriff III 279
Bailable by whom III 452
Bail Bond
Bailiff
Bailiwick

Index Bab

Bail mean
Bail Piece III 289
Bailor
Banishment III 401 IV 137
Bank
Bank Bills - III 46 - 101 - I 71
Bankrupt
Barratry
Barrister
Base fee
Bastard = III 373
Battel trial by
Battery
Bawdy
Bench
Bench III 36-46
Benefit of Clergy III 340-364
Beneficial
Bigamy
Bill in Equity
of Exceptions
of Interpleader III 36-48-54
Bishop Deputy III 502
Bishop III 365 - I 88
Bond penalty of - III 15-30-311
Borough
Blockade - III 126
Boundaries III 183
Blackstone III 376
Bottomry - III 121-133 161-222
Bracton
Breach of Close
Covenant
of peace
of prison
of trust
Bribery
Bail - indictment 130
Burglary
British
Britton
Brother &c III 156-7
Brothels
Burglary III 288-418
Burning II 386
By laws
Barbadoes militia I 288
Calling
Cancelling
Canon Law - I 13
Capias
Capias
Capital
Capital punishment - I 34
Capitis diminution &c

Capital punishment
Capite ten. in
Caption, parts of
Captives
Captures - III 120-196-207
Care & diligence III 240-2
Carnal knowledge of inf.
Carrier common
Cartbote
Case actions on - I 19
Cash-notes not III 41
Casual ejector
Cattle
Caveat emptor
Causa
Cause Challenge for
Causes of Remedies
Certificate
Certainty of time III 50-1
Certiorari
Cestui que trust III 67-196
use
use I 96
Challenge in duel
Challenge of jury
Champertors of actions, see III 215-221
Champion
Chance
Chancellor
Chance medley
Chancery - extent of in law 22
Chancery, powers of - IIII-1-
Charge III 114-190
see also
Charitable uses
Charter & deed
Charles III I 113
Charter party III 224
Chase
Chastity
Chattels - I 9
Cheat common
Cheating
Checks - see Draughts III 102
Chose - judgment in
Chief Justice
Child-parents
Childrens
Chivalry
Chose in action - I 83-100
possession
Church III 388
Circuits
Common Pleas Court
Citation
Civil death
injuries
Law I-13
Liberty

Benefit of clergy
Benefit of clergy - III 365-382
Benefit of clergy - of Peer
Benefit of clergy - of Peeress
Benefit of clergy - of Peeress dowager
Benefit of clergy - of Peeress married
Benefit of clergy - of Peeress widow
Benefit of clergy - of Peeress widow of Baronet
Benefit of clergy - of Peeress widow of Knight
Benefit of clergy - of Peeress widow of Knight of Bath
Benefit of clergy - of Peeress widow of Knight of Garter
Benefit of clergy - of Peeress widow of Knight of Thistle
Benefit of clergy - of Peeress widow of Knight of St Patrick
Benefit of clergy - of Peeress widow of Knight of St Michael & St George
Benefit of clergy - of Peeress widow of Knight of Star of India
Benefit of clergy - of Peeress widow of Knight of Victoria Cross
Benefit of clergy - of Peeress widow of Knight of Order of Merit
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Canada
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Australia
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of New Zealand
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of South Africa
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of India
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Pakistan
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Ceylon
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Malaya
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Singapore
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Malaysia
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Brunei
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Hong Kong
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Macau
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Taiwan
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Korea
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Japan
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of China
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Mongolia
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Tibet
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Nepal
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Bhutan
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Sikkim
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Assam
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Manipur
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Tripura
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Mizoram
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Nagaland
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Meghalaya
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Arunachal Pradesh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Goa
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Daman & Diu
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Dadra & Nagar Haveli
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Pondicherry
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Andaman & Nicobar Islands
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Lakshadweep
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Chandigarh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Delhi
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Jammu & Kashmir
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Ladakh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Himachal Pradesh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Uttarakhand
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Uttar Pradesh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Bihar
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Jharkhand
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of West Bengal
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Sikkim
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Odisha
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Chhattisgarh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Madhya Pradesh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Gujarat
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Maharashtra
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Telangana
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Andhra Pradesh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Karnataka
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Goa
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Kerala
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Tamil Nadu
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Puducherry
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Andaman & Nicobar Islands
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Lakshadweep
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Chandigarh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Delhi
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Jammu & Kashmir
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Ladakh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Himachal Pradesh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Uttarakhand
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Uttar Pradesh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Bihar
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Jharkhand
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of West Bengal
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Sikkim
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Odisha
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Chhattisgarh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Madhya Pradesh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Gujarat
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Maharashtra
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Telangana
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Andhra Pradesh
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Karnataka
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Goa
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Kerala
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Tamil Nadu
Benefit of clergy - of Peeress widow of Knight of Order of Companions of Honour of Puducherry

Consideration III 15-30-48-99
Conspiracy action of
Constable III 254
Constitution I 45
Construction of statutes I-24-43-26-50 liberal & strict I-24
deeds & wills
Construction of Contracts I 50
Contempt
Contesting will
Contingent Legacy
remainder
use
Continual claim
Continua III 147
Continuance II 270-2
Contra
Contra term. tax. I 59
Contra bonos mores
Contra bond III 126
Contribution III 54-139-201
Conventional estates
Conversion
Conveyances Conv. for. III 13-14
Covenant III 168-9
Coparceners
Coparcenary III 6
Copper coin
Copy
Copy hold
Copy rights
Coram Judice I 45
Corn
Coroner
Corporations II 284-I 47-8
Corporeal hereditaments
Corpse
Correction
Corruption
Oath - in crim. cases I-23-75
in civil Do - II 250-260-301-I-19-23-75
Covenant execut. for conveyg. III-134-4
of assignment III 29-6
real - II 30
Coverture I 41
Council
Count in a declaration I 54
Counterboiling
Counter part
Country trial by
County
County courts - III 245
Courts I-8-9-56
Credible witness
Crimes II 315-I 122
Crimi. Con. I 114
Cropping III 449
Crop Bill
Crops remainder
Crown pleas of

Cyprtelege III 389
Curtesy III 16 - I 94 n - 135
Custody
Custom I-5-12
general III 27-1-5
particular III 27-I-10-12-13
Customs
by Orcs - III 142 - I 43
Damage feasant
Damages - penin nat. of, & pen. III 167.
III 248-292
Darrein pres.
Date of a deed
Day of the date &c III 38-40
court
of grace III 28-36-76
De bene esse
Deck - III 161
Deed
Deaf III 523
Dean
Death
Debt action of
Debtor refusing to disc.
Debts priority of
Deceit
Declaration I-III 85-62n
Declaratory stat. I-22
Declinatory plea
Decree
Deeds III 416
Default III 249-290
Defeazance
Defectum triplex
Defence III 290
Defendant
Defrecrmt
Definitive Sentence
Degrees of Guilt
Degrees of consanguinity.
how reckoned
Dehors
Delay
Delictum chal. propt.
Delivery of a bill &c. III 90
Deliverance of a Deed
Demain. III. 248
Demand special
of pay III 76
Demandant
Demurrer
to Evidence
Denizen
Deodand
Departure in Pl.
Deposition
Derivation
Derelict

Decease
Deserter
Desertion III 162
Detainer see title Bank
Detention III 197
Determine
Detinet
Detinue
Devastation
Devastation - III 190-9
Devises III 135 - I 158
Device
Digest
Dilapidation
Dilatory plea
Diminution of security III 23
Dicing
Disability plea to
Disabling
Discharge of joint debtor III 32-3
Disclaimer
Discontinuance of Action III 276
Discontinuance
Discovery
Discretion
Disfiguring
Disguise
Dismembering
Disseisin
Dispensa
Distraction
Distress
Distringas
Disturbance of common
of tenure & leave
Divisible
Divine law
Divorce - a vinc. matr.
a mens & thor.
Docket III 290
Documents III 181
Dogs
Donatio causa mortis I 97-179
Donis Stat. de
Double costs
Double Plea
Dower I 13 - I 101
Drawbacks - III 102
Drawbacks
Drawer Drawee - III 66
Drunkenness III 32 2
Duelling III 375
Duebills - III 103
Dum fuit
Duplicity
Duration III 150
Durante minoritate

Europ[illegible] [illegible] III 8-
[illegible]
Evidence III 248-251-8
Executive power
Exec
Exec
Exercise
Exercises
Exhibitions
Expectancies college advowsons-
Expert
Exchequer
Exception -III 63 - I 100
Exempt cities &c -I 91
Exemption
Exemplification -I 139-125-6
Embarrassment title under -III 7
Employment -I 94 -152
Embargo - III 128-198
Emboitery
Emancipation III 182
Enabling Statute
Enclosure
Endowment of wDevon
Enemies - III 117-129
Engagement of Indemnity III 6-
Eng. law
Enlarging Statutes
Enquiry writ of
Entail
Entry [illegible]

Equity - equal law brevia III 7-I 50
means of avoiding contr. III 18
of Laws - I-4
Equitable mortgage - I 104
Error in Acc.
Error writ of III 252-5-108
Escape III 33-278
Escheat - I 108
Escrow
Esq.
Estate - its incidents
Estoppel - 190
Estrays
Evidence III 93 - I 175
Exceptions
Exchequer Courts
Examination of witnesses
Exceptions in a Stat. I 61
Exceptions Bill of
Exchange Bill of
[illegible]
Exercises
Exercise
Excommunication
Executed Com. III 349
Executed contracts
[illegible]
Execution - III - 256 - 291-315-324-329

Executive officer
Executor – III 66-229
Executor de son tort
Executor
Executor
Executory contract
conveyance – III – 14
devise – I 145
estate
Exemption
Exigi facias
Exhibetanes
contract for heirs voice – III 21
Expenses
Exhortation at trial
Expostulatory Laws I-2-25-5
Express condition
warrant
words
Extinguishment
Extortion
Eye
Eye witness – III 270
Fair trial – III 239
Fair
False imprisonment
return
verdict
False oath
Farm
Farrier
Father
Father
Father
Father
Father
Father
Father
Father
Father
Fee simple – III 14
Felo de se – III 358
Felonious Homicide – III 358
Felony – III 318 358 – I 30
Feme covert – III 25 – 66 327 – 335 – I 30
Feodal tenures
Fertiliser
Fetus nature – 12
Fiery
Fiduciary
Feudum Novum
Antiquum
Fiction
Fictitious Payee – III 104-5
Fieri facias
Filiation
Filial fear
Final judgment

Finding
Fine and Recovery I 145-160
Fines & Forfeitures - I 41
Fire insurance
Fire ordeal
Fisheries

Fish pond
Fitzherbert
Fleets
Forcible entries
Forcible entry & detainer
Forechamber
Foreign Bills III 40
laws to be proved III 28
Ateliers - III 82
judgment III 172
attachment III 270
Forest
Forfeiture I 38

Forgery II 22
Forms of law
Formal defects III 90
Fornication
Forts - III 130
Franchises
Fraud
Frauds & perjuries III 21
Fraud where bankrupt - III 18

Frauds & perjuries - I. 60

Fraud - III 115-182 - I 82
Fraudulent conveyance III 6-I 50
171, 514
Free ships - free goods III, 76
Freehold
Freight in abeyance
Freehold - III 190-225
French
Fruit
Fuero particulier III 48
Funeral expenses
Furandi animus
Further freehold in - I 144-5

Gage
Gambling III 19-48-100-119
Game
Gaolers
Gavelkind
General Demurrer
impertinence
improvidence
leave
Letter
Mail
Majority

General warrant
Gentlemen
Gentry
Gift
Good behaviour sec. for
Good tenure
Government
Grace – in days of –
Grand
Grant
Gross
Guardian & ward
de facto
by Nature
in deed
Habendum
Habere facias poss.
Habitation offences &c.
Hedgerows sacred
Hale III 374
Hand
Hand-burning
Hanging
Harbour
Hardwicke – L. I – 8
Heir
Heir apparent, expect. of void III 21
Heir-loom
Heriot
Heriot-service – I 80
Hereditaments – I 90
Hereon
Heresy
High
Highways – I 80
Holden
Holding
Holy-days – Bill III 26
Homage
Homicide
Homine replegiando
Honoris respectum
Horses sale of – III 118 –
Hotchpot

House breaking &c. III
House bote
Housebury
Hundred
Hudsons Bay &c. III 150
Hunger
Hunting
Hurdle
Husband & Wife
Hurricane &c. III 140
Hypothecation
Identity III 144-5
Idiots III 323 I-30
Ignis fatuus I-109-203
Ill treating III 196-201
Jeofails III 306
Jews
Ignorance of law &c III 75-326
Illegal conditions
Illegality III 99
Imbezzling
Insurance
Impeachment of Judges III 73
Implication I-64
Implied conditions
contracts III 31-2
warranty III 180
Impossible conditions III 166 I-43-4
Improper practices relating III 18
Impotency
Imprisonment for debt
Imprisonment false III 71
Incendiary
Incident
Inclosures
Incorporeal hereditaments I-90
Incumbrance
Indeb. assumpsit
Indefeasible
Indentures
Indictment I-59
Indifferent persons III 255-6
Individuals
Indorsements III 29 36-42-60-279-281
Infamous witnesses
Infant III 44-312-334 I-30-170
Infernal
Information I-63
Information

Interest money III-8
Interest money coming to her husband III 8

Inheritance

Injunction ag. waste III 28
ag. Defendant in Ch. III 15-25
ag. proceed. at law — III 3-5

Injuries

Innkeeper

Inns

Innuendo

Inquest of office

Insanity III 193-230

Insensible compellation

Insolvent

Inspection

Installment

Instanter

Institutes

Insurance III 113
Companies — III 119

Interest allowed
upon legacies

Interest or no interest — III 116-132

Interested witness

Interlineation

Interlocutory Judgt.

Interpretation of laws IIIII 1

Interrogatories

Intestate

Intrusion III 39

In transitu III 52-230

Intrusion

Inventory

Investiture

Invoice III 326

Invoice III 160

Joint Debtors III 32-69-71-272

Joinder in demurrer
Joinder I 158
Joint tenancy III 228-I 92
Joint & several III 71-88
Joint-tenants I 90-2
contract III-6-71-121-228

Jointure I 108-171

Immoveable matter

Issue Joinder of II 298
Joinder of
in law — see Demurrer II 299

Italian scripture c. I-192

Juelgs III 253

Judgment I 90

Judgment action on
when a bar to — III 71-3

Judicial

Judicium

Jurisdiction of Court III 243-7-448-I 45
pleas to.

Jurors

Jury

Jus accrescendi III 228-I 90-155-192

Justices of Peace III 243-257

Justices of the Peace
Justifiable Homicide III 344
Justification III 348

Keeper
Kidnapping
Kin
King
Kings Bench III 454
Knight
Knight Service
Laborers (Eng)
Laches
Lenity
Land Tenure & Ejectment
Land - III 266
Lapse
Lapsed legacy
Larceny III 397

Latitat
Law-common - III 135
Laws construction of I-8 n

Lawyer
Lay
Leach III 36
Lease

Legacies

Legal
Legislative power I 124
Legislature III 253
Legitimate child
Lending
Lending & Borrowing
Letter - I 29
Letters Patent
Levant & Couchant
Levari facias
Levying war
Lex non scripta - I-5, 64 n
Lex scripta I-18
Libel
Libel III 374
Liberty civil
natural
of the Press
personal
Licence
Licentia
Liege
Liege - III 225-242-305
Life estate, for
Light houses III 164
Light
Lighter III 149
Limbs

Limitation - I-34
Limited
Lineal consanguinity

Lineal

Literary

Littleton

Livery of Seizin

Locality of Jurisdiction - I 32

Local actions
Law's - I 82

Logic

Lyndwood

Lyster not Court - III 164

Legal

Legal - III 142-193-4-206-214-228

Legacy

Lunatics III 323 - I 30

Lunacy

Madmen Vide - Lun. & Idiots

Magistrates

Magna

Maintenance

Maintenance

Majority - I 47

Malice in - I 122

Male

Malice III 379-393

Malicious prosecution

Mandamus

Mansfield - Lord. III 107

Manslaughter III 388-390

Manuscripts I 359-360

Manufactures

Manumission

Marine insurance - III 113

Mariners - III 227

Marital rights I 137

Maritime

Maritime

Marque & Reprizal - III 154-162

Marque & Reprizal

Marriage I 175

Contract III 5-11
Settlement III 11 - I 170 &c

Marshal

Marshalsea

Martial

Master & Servant - III 99-381-2-405-6-I 126

Master of Ship - III 160-212

Matrimon

Maxim

Mayhem

Mayors

Measures

Members

Menaces

Menial Servants

Mens & Thes

Mercantile laws III 27-I-9-11

Mines landlord III 8
Bills payable in III 48

Mesne

Metaphysics

Migration
Mr. Justices decree III 175

Military

Militia

Miner

Miner - I 171

Misdemeanor III 349

Misdemeanors - III 315-449

Misjoinder
Misjoinder III 300 - I 158

Misnomer

Misprision

Misrecital

Misrecital - I 50

Mistake in point of law - not ground of relief III 20
of law III 75
of fact III 164-325

Mistress

Mitter

Mittimus III 326

Mixed

Mob - III 146

Mobile manus imposuit

Monarchy

Monk

Mort - III 15

Mortgage

Mort d'ancestor

Mortgages III 4-1-108-171

Mortmain

Mortuum vadium

Motion

Mountebank

Mulier puisne

Municipal law I-1

Murder III 359-365

Mutilation III 5

Mute

Mutes

National debt

National law

National

Naturalization

Nature loco rei sitae

Nature Laws of III 318-I-1

Navigation

Nave
Necessaries given to infant by money lender or to infant III 8

Necessity
Necessaries - III 44-I 124-5

Negative

Neglect

Negligence - III 140

Negligent act
Negligence - III 29-41-2-60

Negro

Neife
Neifmanship - III 126-166-171

New Assignment
Old, see old title

Next of Kin
Next friend - vid prochein amy

Night

Nil Dicit

Nil Habet

Nisi Prius

Nobility

Non Compos

Non Constat - I 54

Non Est Factum - III 92-94

Non Residence

Non Suited - I 54

Non Tenure - III 280-281

Nonsuit - III 204

Northern Circuit

Norman Conquest

Note

Notice - III 55-69-72-7-80-101-204

Notice of Assignment - see Assignment

Notice of Dishonour - see Bill of Exchange

Notice to Quit - see Landlord and Tenant

Notice to Produce - see Evidence

Notice to Shareholders - see Company

Notorious Possession III 155

Notary Public - III 78-80

Novel Assignment

Novel Disseisin

Nuisance
Abatement - III 216
Action - III 220-30
Assize - III 220-30
Damages - I 54
Injunction - I 54
Prescription - III 216
Remedies - III 220-30

Nuncupative will

Nunc pro tunc

Nusance
injunct agst - 2d

Oath

Objection
to jurisdiction in Evidence - III 245

Obligation

Obligee

Obligor

Occupancy

Occupation
Abandonment - III 40
Adverse - III 40

Offences against Public Justice III 155

Option
Orders holy
Original
Orphan
Ostium Ecclesiæ I 105
Overseers
Overt act of treason
market-overt
Oyster
Outlawry
Oyer
Oyer & Terminer
Pain
Palatine
Pandects
Panel of Jurors

Paper
Papist
Paramount
Paraphernalia
Parcels
Parcener
Parco fracto
Pardon
Pardoning
Parent & child
Parental power
Parents
Paris passu
Parish
Park
Parole conveyance
wills
evidence
acceptance
Parricide
Parson
Particular estate
Parties to a suit
Parties to a deed
Partition writ of
Partnership

Pass ports
Pasture common of
Patent
Patronage
Paupers
Paxon
Peace
Peace justices of
Peace-the kings
security of
Breach of
Pecuniary

Peers
Peine forte & dure
Penal Statutes I. 22-54-121
Penalty of a bond II. 5
Pendente lite
Penitentiary Houses
People III 198
Performance Specific II-689
Peril of the sea III 9
Peril &c
Peril III 116-140-297
Per my & per tout
Peremptory writ
challenge
mandamus
Perjury III 368-438
Permissive Waste
Perpetuating testimony
Perpetuity of Corporation
Persecution
Persons injuries to
larceny from
Personal actions
assets
chattels III 410
Security
Personating
Persons nat. & artific.
Petition
Petty jurys
Petty larceny
treason III 380-I. 31
Physicians
Picture
Pigeons
Pillory
Piracy
Piscary
Plaint
Plaintiff
Pleas in abatement III 296
Pleas & Pleadings III 290-I 57-60
Pleas of the Crown
Pledges - estates in I 9
Plegii de pros. III 282
Plene Probatio
Plenum bonum
Pocket mortgages
Pockhouse nuisance III 2
Poisoning
Policies of Insurance III 113-155-165-I 9
Policy II 116-155-I-921
Political liberty
Poll, deed
Polls challenge to
Polygamy
Pone writ of
Poor

Pope
Popish recusants
Popular action I-166
Portions
Posse comitatus
Possession actual right of I-107
Possessory action
Possibilities not assignable
Postea
Post office
Pound breach
Powers - I-45-54
Powers of chancery IIII-1
Power of attorney III-99
Precipe III-254
Precipe quod III-278
Premunire
Precedence I-6
Precedents
Precedents conditions
Precontract
Pre-emption
Pregnancy plea of III-379
Premium III 15-121-156-195-214-5
Premises
Premises of deeds
Prerogatives
Prescription
Presentation
Presentment of Grand Jury III 35-73-81
Press, liberty of
Pressing
Presumption II 388
Presumptive evid.
Pretended title of Stand
Prevention
Price
Priest
Primer seisin
Primogeniture
Principal in the first
Principal & accessary III 38-9
challenge
Prior
Priority of Debts
Prison
Private III 183-188
Private acts I-19-I-52
nuisance
writings II 316
Privilege of pleading III 310
Privies

Privelege

Priority of Contract III 31-2 8
Privy council
Probable
Probate courts I 103
Probate of Wills
Proofs — — — 105

Prochein Amy I 88
Proclamation
Procuration
Prodigals
Profert in pleading
Profits I III 134
Prohibition

Promises expr. & implied III 91-2
Promissory notes III 37-40-9-76
Promulgation
Proofs of
Property real
personal
Prosecution malicious
of offenders
Bonds &c III 189-288-9
Protection of Children
Protector
Protest of Bills &c III 76-8-80
Protestant

Protestation
Proving wills
Provision
Provisos I 61
Proxies
Public Prosecutor III 35-I-67
Statutes I-19-I 52

Publication

Puis darrein cont.
Puisne Justices
Punishment III 319-379-449-450
accumulative III 396
Pur autre vie
Purchase

Purchasers first
Purgation III 2
Pursuit of remedies
Putting in Issue
Quare I III 448-I-24
Qualification

Qualifications of Jurors
Qualified fees
Quantum meruit

Quare clausum fregit.
Quarentine III 52
Quarrelling
Quarter Sessions
Quashing
Que estate
Qui tam &c. I 65
Qui tam &c. III 244-249-253-452
Quia emptores I 65
Quiet enjoyment
Quit claim
Quo warranto
Quod consortium amisit I
Quod permittat I 47
Rack rent
Ransom III 197
Rape
Ravage III 5
Real action
Reasonable time III 195
Reasonable time I 4
Reassurance III 138-216
Rebutter
Recaption
Recaption III 4
Receiving Stolen goods
Reciting a deed I 52
Reciting an instrument III 435
Recognizance of bail
Recognizance III 259-286
Receipt
Receipt to officer III 249-269
Reclamation
Record
Records
Recovery II 70 I 148
Recovery
Rector
Recusants
Redemdum
Rediseizin
Redisseisin
Reference
Reformation
Register
Register of Deeds
Rejoinder
Rehearsal
Relation
Relation
Remainder

Relative rights & duties of parent & child.
Release - I 88-9-90
Release
Relict III 2
Religion officers of
Remainder
Remedial laws - I 22-33
Remitter
Removal
Rent - I 88-91-6

Repeal - I 36-9
Rebleeder
Rebleein III 262
Replication
Reply

Representation III 166-8-182

Reprieve
Reprisal
Republication of Will
Repugnant - I 35
Reputation injuries to
Rescript
Rescue
Residence

Residuum
Resistance
Respite
Respondeat Ouster
Restitution

Restraint
Resulting use
Retainer

Retreat III 295
Retrospective laws - I 2-26-39-4
Return of Premium III 245
of writ III 26-7

Revenue laws - III 123-164
Reversal

Reversion

Reverter
Review

Revival
Revivor
Revocation - I 156

Revolution
Reward
Right

Riot III 149
Risk - III 140-150-216-220
River

Robbery - III 146-149
Roads
Rob of Equipage - III 175
Route
Royal
Rule

Sabbath - I 62-76
Sacrament
Safe conduct
Sale
[illegible] - III 170

Salvage - III 163-206

Sanction
Satisfaction

Satisfaction
Savage - III 35
Season
Seal
Seamen
Separate use
Seine
Seize facias - I 245-254-272-280

Seizure stat. I 61
Selvage
Semble
Send - III 21-47-8
Sense words - III 141-189
Search & visitation - III 175-6
Secondary
Secretary
Securities
Security

Se defendendo - III 352
Seduction
Seizin livery of
Seizin - 93-4-101
Selachi judice
Self Defence - III 352
Separate property I 184
Self murder - III 358
Separation artic. of - entered III 46 - I 133
Servitude
Serjeant

Servants III 99

Service II 334-2[illegible]

Service

Session

Set off III 22

Settlements - I 86-171

Severalty estate

Severance

Severity

Sheep

Sheriff III 255-328

[illegible]

Ship I III 121-130-, 61-140

Shire

Shooting

Shroud stealing of

Signed, = III 170

Signet

Signing

Similitude

Simony

Simple [illegible]

Single [illegible]

Slander - I 112

Slave - III 95

[illegible] - III 121

[illegible]

[illegible]

[illegible]

[illegible]

Social [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Special [illegible]

Specialty III 285

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

property

Statute

Suit

verdict

Statutes
Specific I-100
Specific III 144
Stephens Legacies
repeal III 3
Peterborough III 64
Stock
Stonehenge
Stopping ways
Stock
Suffering
Stake driven thro Body
Stamps - I 42
Standard
Statute commorientes
Statute Regius - II 104-151
Star Chamber
Stated account
Statute: I-18
Public & Private II 19-52
Declaratory & Remedial I 22-31
Penal & beneficial I-23-33
affirmative & negative I-25-31
construction I-26-3-33
Construction - I 31
Staunton
Stealing: Civil & Ecc. II 55-56
Statutes 55-335
Stewards
Stiles
Stillicidium
Stirpes & distributes
Stock
Stage 164
Stock - receiving III 164-335
Stranded - III 145
Strangers
Striking
Students
Study
Stultifying oneself
Subornation of Perjury
Subpoena
Subpoena duces
Subpoena ad testificandum
Subsidies
Subtraction
Succession
Successors
Sufferance estate at
Suffrage
Suicide III 358
Suit
Summons
Summoners
Summoning XII 254-260
Summoning & Attaching
Sunday III 35-273
Super sedeas III 250
Superior Court III-262
Superintendence
Supplemental
Supreme
Supreme power I-89
Suppression - III 18
Surety III 285

Surfeiters
Surrebutter
Surrejoinder
Surrender — Principal — III 280-2
Surveyors
Survivorship — III 33-228-190
Suspens. of Hab. Corp.
Swearing
Sweet
Tail Tenants
Tales
Tales de circumst.
Taxation of Costs
Taxes
Tenant
Technical Terms & words
Tenant — Duties — IIII 142-132
Tenant
Temporary — III 120
Tenure — III 142
Tenement
Tenendum
Tenths

Vicinage I 5
Vendre
Ventre inspicien de
Ventre sa mere
Venue III 265
Verdict III 300
Verge, officer of Court III 5-6
Vested Legacy
Vicinage
Villein

Vigent. medium,
Violent presumption II
Visitation, right of III 5-6
Vivum Vadium

Umpire
Ungulibus et caudis I 133
Unanimity of Jurors
Unpresumable Law I 44
Uncore Prist
Undercroft III 19-52
Under Sheriffs
Undue influence III 19
Undue of Joint tenancy
Unfairness of Will in Equity III 19
Universitas
United States III 82
Unlimited power of disposal
Void to all intents & purposes I 100-I 44
Upon Close
Unwritten Law I 5
Volunte
Voluntary conveyance
Voyage III 218
Vouchers
Usage III 150
Uses

Waiver 36-55
Usurpation

Usury – III 19-28-100-121
Usufruct – I 93
Uttering false money
Wager of Battel & Law
Wagering Policies – III 116-133
Wagers – III 115-6-133
Waifs
Waifes of Lee men – not in use – III 130-208-228
Wales
War & peace – see Treason –
Wardship
Warrant – see Search –
Warranty – III 80-115-165-7-172-4-182-9

Waste see Injunction
Waste – III 23-4 – I-58
Water
Ways
Wharf
Wiltshire
Whole blood
Wife – Battery of –
Will estates at
Will defect of – see murder – II 321-24
Wills & Testaments – I 160 &c –
Wine
Withername
Witnesses to Deeds
to Wills
Witnesses – ~~where present~~ – I 175
Women – jury &c – see Jurie
Wool
Words, ambiguous,
Work house
Wounding
Wrecks
Writs III 253-8
Writing – See forgery – I-60
Written Evidence – see Devise-Deeds I 60
Wrongs Public – see Private
Year
Year & a day –
Years – estates for – see Term for
York & Lancaster – see Uses

LITCHFIELD
LAW
SCHOOL

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LECTURES

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